Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 2000

ECOBAN FINANCE LIMITED,

Petitioner,

-against-

GRUPO ACERERO DEL NORTE, S.A. DE C.V.,

Respondent.

ECOBAN FINANCE LIMITED,

Petitioner,

-against-

ALTOS HORNOS DE MEXICO, S.A. DE C.V.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.

Whether, in light of this Court's decision in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), the United States Court of Appeals for the Second Circuit erred in affirming the dismissal of Petitioner's complaints on the ground of "international comity" where Petitioner's complaints sought a remedy "at law" only and did not seek equitable or discretionary relief.

2.

Whether the courts below erred in holding that, in a case in which the District Court's subject-matter jurisdiction was based upon the diverse citizenship of the parties, New York state law, rather than federal law, governed the question of dismissal on the ground of "international comity."

3.

Whether the dismissal of Petitioner's complaints on the ground of "international comity" *with prejudice* should be reversed where (a) the foreign proceedings in question have not adjudicated Petitioner's claims on the merits and (b) such foreign proceedings may be discontinued before any such adjudication takes place.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, petitioner Ecoban Finance Limited (a private non-governmental corporation) certifies that SK Global America, Inc. is the registered owner of Ecoban Finance Limited. No publicly held company owns 10% or more of the stock of Ecoban Finance Limited.

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PETITION FOR A WRIT OF CERTIORARI

Pursuant to 28 U.S.C. § 1254, Ecoban Finance Limited, plaintiff and appellant below, respectfully petitions this Court for a writ of certiorari to issue to the United States Court of Appeals for the Second Circuit to review that court's judgment of January 12, 2001, which affirmed the dismissal of Petitioner's claims on the ground of "international comity."

OPINIONS BELOW

The Summary Order of the Second Circuit, dated January 12, 2001, is reproduced at pages 14a-16a of the Appendix ("App.") and is reported in table form at 242 F.3d 364. The Memorandum and Order of the United District Court for the Southern District of New York, dated August 8, 2001, is reproduced at pages 1a-11a of the Appendix and is reported at 108 F. Supp.2d 349.

JURISDICTION

Judgment was entered by the Court of Appeals on January 12, 2001. *See* App. At 12a-13a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

None.

STATEMENT OF THE CASE

Petitioner Ecoban Finance Limited ("Ecoban") is a New York corporation that provides trade-related financing to banks and other businesses in less-developed countries. Both Respondents are Mexican corporations. Respondent Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") is Mexico's largest steel producer. Respondent Grupo Acerero del Norte, S.A. de C.V. ("GAN") is AHMSA's corporate parent. Ecoban is the holder of $15,000,000 (principal amount) in promissory notes issued by GAN and is the holder of another $3,000,000 (principal amount) in promissory notes issued by AHMSA. All of the promissory notes are in default.

On October 19, 1999, Ecoban commenced two actions in the United States District Court for the Southern District of New York against GAN and AHMSA, respectively, to recover upon the defaulted promissory notes. Petitioner's claims were based exclusively on state law causes of action, sought legal relief only, and did not seek an equitable or discretionary remedy. The District Court's subject-matter jurisdiction in both actions was premised on the amount in controversy and the diverse citizenship of the parties. *See* 28 U.S.C. §1332(a)(2).

Each of the promissory notes contains a non-exclusive forum selection clause by which the issuer (GAN or AHMSA) agreed to submit to the jurisdiction of either a federal or a state court in New York City. Each Respondent also agreed that in any such action, the promissory note would be governed by and construed in accordance with New York law. App. at 1a.

Both Respondents appeared generally after being served with process as directed by the District Court. In their answers to Petitioner's complaints, neither Respondent contested the District Court's subject matter or personal

jurisdiction, the venue of the proceedings, service of process, or the sufficiency of service of process.

After issue was joined in both cases, Petitioner moved for summary judgment. Petitioner's motions were supported by affidavits as required by Fed. R. Civ. P. 56(e) and were essentially undisputed.[1] Respondents cross-moved pursuant to Fed. R. Civ. P. 12(c) to dismiss Petitioner's complaints on the ground of "international comity." The basis of Respondents' cross-motions was that in May 1999, they each had commenced a "suspension of payments" ("SOP") proceeding under Mexico's *Ley de Quiebras y Suspensión de Pagos* ("Law of Bankruptcy and Suspension of Payments") (the "LQSP").[2]

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[1] In opposition to Petitioner's motion for summary judgment, Respondents submitted affidavits by their counsel questioning the significance of endorsements by third parties that appeared on certain promissory notes. Counsel queried whether Ecoban was in fact the "holder" of those notes. However, because Ecoban had indisputably "reacquired" the notes in question, this issue was immaterial as a matter of law. *See* N.Y. U.C.C. § 3-208 (McKinney's 1991).

[2] Under the LQSP, a "suspension of payments" proceeding is not a "liquidation" and does not involve a marshalling of assets or a distribution to creditors. There is no liquidator and no trustee. Rather, the debtor (who need not be insolvent) simply ceases meeting its obligations and files a pro forma petition to commence a SOP proceeding. When the petition is granted, all debts are converted to Mexican pesos, interest ceases to accrue, and all debt service is suspended. While its creditors remain thus in "suspense" — typically for from several to ten or more years — the debtor is free to run its business under the surveillance of a "sindico," who reports to the court, but has no fiduciary duties and no control over the debtor's activities.

Significantly, neither Respondent commenced an ancillary bankruptcy proceeding under 11 U.S.C. § 304, and neither the United States nor Mexico intervened in support of Respondents' motion for dismissal on the ground of "international comity."

Petitioner received notice and filed a protest at the time that both "suspension of payment proceedings"[3] were commenced; however, Petitioner did not assert any claim based upon the promissory notes in either AHMSA's or GAN's "suspension of payments" proceeding until some two and four and one-half months, respectively, after Petitioner had commenced the actions in New York. Petitioner thus filed for recognition of its claims in Mexico as a matter of prudence and in light of deadlines imposed by the Mexican courts. No judgment has been entered in Mexico with regard to either such prudential claim filing. Moreover, a debtor may emerge from an SOP before any judgment regarding claims is rendered.

Mexican observers regarded the LQSP as "the worst law ever enacted in the history of Mexico," M.R. Rowat, J. Astigarraga, *Latin American Insolvency Systems, A Comparative Analysis,* World Bank Technical Paper No. 433, p. 65 (April 1999) (footnotes omitted), and it was repealed by the Mexican government in May 2000, while the parties' cross-motions were pending in the District Court. Under Mexican law, however, that repeal was not retroactive, and so did not affect Respondents.

[3] AHMSA's petition is before a local judge in Monclova, State of Coahuila; GAN's petition is before a different judge in Mexico City.

The Orders of Attachment

On October 28, 1999, after notice and a hearing, the District Court issued orders of attachment pursuant Fed. R. Civ. P. 64 and Article 62 of the New York Civil Practice Law and Rules. Under New York law, the orders of attachment operate only against Respondents' assets within the Court's jurisdiction. In the Second Circuit, neither Respondent filed a cross-appeal from the orders of attachment.

The Decisions Below

Holding that the "decision, whether or not to grant comity, is to be determined under New York state law," App. at 5a, the District Court granted Respondents' motions to dismiss on August 8, 2000, based solely on "international comity." The District Court also ruled that all other motions were moot, including Petitioner's motions for summary judgment, and vacated its orders of attachment. App. at 11a. Judgments of dismissal were entered in both cases on August 11, 2000. App. at 12a-13a. Because the judgments did not provide otherwise, under Fed. R. Civ. P. 41(b) they operated as an "adjudication upon the merits."

Petitioner appealed both judgments to the United States Court of Appeals for the Second Circuit, which, after consolidation, affirmed the District Court in a Summary Order dated January 12, 2001. The Summary Order states in relevant part:

> Plaintiff Ecoban Finance Limited appeals from an order of the United States District Court for the Southern District of New York (Alvin K. Hellerstein, D.J.), dismissing its complaint on the grounds of

> comity, by reason of the ongoing suspension of payments proceedings in the courts of Mexico. We affirm for substantially the reasons set forth in the opinion of the district court.

App. at 15a-16a.

REASONS FOR GRANTING THE WRIT

I. THE DISMISSAL OF PETITIONER'S ACTION "AT LAW" ON THE GROUND OF "INTERNATIONAL COMITY" WAS IMPROPER.

In *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), this Court held that "federal courts have power to dismiss or remand cases based on abstention principles only where relief being sought is equitable or otherwise discretionary," 517 U.S. at 731 (emphasis added), and that "we have applied abstention principles to actions 'at law' only to permit a federal court to enter a stay order that postpones adjudication of the dispute, not to dismiss the federal suit altogether." *Id.* at 719.

The first question presented is whether the rule articulated in *Quackenbush* applies equally where abstention is sought on the ground of "international comity." This important question was not reached by this Court in its earlier decision in *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993). There, the Court held that the decision "to refrain from the exercise of jurisdiction on grounds of international comity" -- "or, more precisely, abstention," 509 U.S. at 820 (Scalia, J., dissenting) -- required a threshold showing of whether "there is in fact a true conflict between domestic and foreign law." 509 U.S. at 798-99.

Although this Court has in the past addressed several aspects of the concept of "international comity," it has not considered the question presented here. The factual circumstances in which this cases arises, however, are likely to present themselves with ever greater frequency as cross-border trade between United States and foreign nationals increases, and as the lower federal courts increasingly confront issues involving debtor protection laws of foreign nations. This "run-of-the-mill contract dispute,"

Quackenbush, 517 U.S. at 729, in which a federal court has jurisdiction over a state law cause of action based solely on the diverse citizenship of the parties, raises fundamental issues concerning the right of a domestic plaintiff with a domestic cause of action to seek a remedy in the courts of its own nation, the duty of a federal court to exercise the jurisdiction conferred upon it by Congress, and the legal regime governing a federal court's adjudication of motions to dismiss (or stay) based upon "international comity."

Because the judgments below are in conflict with this Court's settled jurisprudence regarding the obligation of a federal court to exercise its jurisdiction, because the Circuit Courts of Appeal that have considered this question are divided with respect to the propriety of dismissal, and because the courts below, by dismissing Petitioner's claims, granted Respondents greater relief than they would have been entitled to under Mexican law, this Court should grant the Petition and review the judgments below.

A. Where the Plaintiff's Action is "at Law," a Federal Court Lacks the Power to Dismiss on the Ground of "International Comity."

This Court has repeatedly held that "abstention" doctrines are "the exception, not the rule," of federal subject-matter jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Indeed, as regards a district court's obligation to exercise the jurisdiction conferred upon it by Congress, the Court's holdings on this subject now border on the absolute: "Our cases have long supported the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred." *New Orleans Public Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 358 (1989) ("*NOPSI*") (emphasis added; citing cases). At the same time, the Court has recognized that in exercising the

jurisdiction given to it, a federal court in a particular case may have discretion "in determining whether to grant certain types of relief." *Id.* at 359. Where the remedy sought by the plaintiff is not discretionary, however, the Court has held that "we have permitted federal courts applying abstention principles in damages actions to enter a stay, but we have not permitted them to dismiss the action altogether." *Quackenbush*, 517 U.S. at 730; *see also Warmus v. Mehlan*, 517 U.S. 1241 (1996) (vacating and remanding judgment of dismissal on "*Younger*" abstention grounds "in light of *Quackenbush*").

The source of a federal court's "power" to dismiss on abstention grounds "derives from the discretion historically enjoyed by courts of equity," *Quackenbush*, 517 U.S. at 727-28, and is "the common-law background against which the statutes conferring jurisdiction were enacted." *NOPSI*, 491 U.S. at 359. In the domestic context, the restrained exercise of that power is informed by considerations of proper constitutional adjudication (i.e., adjudication of U.S. constitutional issues) and federalism. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). However, the aspects of federal-state "comity" that underlie domestic abstention cases plainly will not support an extension of those exceptions to the field of "international" comity. In sum, where the relief sought by a plaintiff is not discretionary, *Quackenbush* implies that a federal court is without the "power" to dismiss on grounds of "international comity."

The courts below cited this Court's decision in *Canada S. Ry. Co. v. Gebhard*, 109 U.S. 527 (1883), for the proposition that a domestic court will defer to a foreign bankruptcy proceeding by dismissing a domestic plaintiff's claim in the interest of "international comity." App. 10a-11a. The salient fact in *Canada Southern Railway*, however, was that the foreign "scheme of arrangement" in question

(whereby the plaintiffs' original bonds were exchanged without their consent for new bonds, which were not in default) had already been adopted and approved by the Canadian parliament by the time that the plaintiffs brought suit in federal court. The Court held that the compulsory Canadian "scheme of arrangement" barred plaintiffs' suit on the original bonds. *Id.* at 539.

But the dismissal in *Canada Southern Railway* plainly was not an "abstention"; rather, the Court found that plaintiffs' cause of action had been mooted by the supervening act of the foreign legislature that had created the railway that had issued plaintiffs' bonds in the first place. 109 U.S. at 538-39. (No such supervening act of a Mexican court or the Mexican legislature is in question here.) The decision in *Canada Southern Railway* is therefore but an instance of the recognition and enforcement of a foreign legal act, and fits comfortably within this Court's now-familiar definition of "international comity" as

> the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895) (emphasis added) (declining to recognize and enforce a judgment of the courts of France on the ground that French courts would not reciprocally recognize the conclusiveness of a domestic judgment).

As the above quotation from *Hilton* suggests, the question of whether foreign proceedings warrant "comity" is distinct from the question of whether such comity, if warranted, also justifies abstention. Petitioner therefore need not dispute that a federal court may grant "comity" to the acts and decisions of a foreign tribunal if the requirements of

Hilton are satisfied. Neither *Hilton* nor *Canada Southern Railway*, however, supports the further proposition that a federal court may dismiss a plaintiff's domestic cause of action "at law" in deference to a foreign proceeding where that proceeding has yet to result in a judgment.

In the more than one hundred years since *Hilton* and *Canada Southern Railway* were decided, and most strikingly in recent years, the means and devices by which federal courts have thought to afford "comity" to other nations have grown more varied than the simple recognition or enforcement of foreign judgments. However, the lower federal courts must, in the era of an emerging "global economy" and concepts like "cross-border insolvencies," still look to decisions by this Court from the 19th Century for guidance concerning "international comity." At the same time, this Court's "abstention" cases, culminating in *Quackenbush*, have taught that the power of a federal court to decline to exercise the jurisdiction constitutionally conferred upon it by Congress is sharply limited. This Petition presents the Court with the occasion to lend its guidance with regard to the rule governing federal court abstention in the international arena, and should be granted.

B. The Circuit Courts of Appeal Are Divided With Respect To The Propriety of Dismissal on the Ground of "International Comity."

A stay, rather than dismissal, is in fact the remedy that has been applied, often under the name "international abstention," by several other circuit courts in cases wherein "international comity" was requested. *See, e.g., Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1222-23 (11th Cir. 1999) (in a case of first impression, distinguishing *Quackenbush* as a "federalism" ruling, but reversing judgment of dismissal in favor of a stay on the ground that "our jurisprudence in this area does not dictate that we

should dismiss cases" involving foreign parallel proceedings); *Ingersoll Milling Mach. Co. v. Granger*, 833 F.2d 680, 685 (7th Cir. 1987); *see also Philadelphia Gear Corp. v. Phila. Gear de Mexico, S.A.*, 44 F.3d 187 (3d Cir. 1994) (remanding for further findings; party seeking a stay "must demonstrate [that] (1) the foreign bankruptcy case shares our policy of equal distribution of assets; and (2) the foreign law mandates the issuance or at least authorizes the request for stay"); *Boushel v. Toro Co.*, 985 F.2d 406 (8th Cir. 1993) (stay on the ground of "international comity" was not an appealable final order; dismissing appeal but approving issuance of stay in dictum).

On the other hand, the Fourth Circuit Court of Appeals apparently agrees with the Second Circuit that a domestic cause of action may be dismissed on "international comity" grounds. *Meisel v. Ustaoglu*, No. 00-1552 (4th Cir. March 6, 2001) (unpublished disposition; available on Westlaw, 2001 WL 218793).[4]

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[4] We note that neither the Fourth Circuit nor the Second Circuit has affirmed such a dismissal and distinguished *Quackenbush*. Of course, this does not detract from the impact of the judgments below on the litigants. In Petitioner's case, its claims in the aggregate amount of some $18,000,000 plus default interest and costs, have been cast into limbo by the decisions below, leaving Petitioners with no assurance when (or indeed, whether) they will ever be decided. The effect on Petitioner's business, which depends upon the regularity of the financial transactions that it enters into and the predictability of the negotiable instruments that Petitioner deals in, is particularly severe.

From a systemic point of view, moreover, the existence of "unreported" decisions that dismiss a party's claims on novel legal theories creates a substantial risk that a parallel "shadow" jurisprudence will develop, effectively concealing certain decisions from review. The fact that the

The split among the circuits is illustrated most strongly by the decisions of the Second and Third Circuit Courts of Appeal, the two courts which have had occasion to develop the most extensively cited lines of authority in this area. That conflict, moreover, implicates fundamental questions concerning the uniform treatment that a domestic plaintiff might justifiably expect to receive when confronted with a foreign insolvency proceeding. This is not an area of the law in which regional variations among the circuits might be considered insignificant or even desirable. The "comity" at issue here is the "comity of nations," and there is nothing to recommend a difference in treatment between two domestic nationals based merely upon the venue where they happened to commence their domestic causes of action. That is, a domestic plaintiff that is also a creditor in a foreign proceeding should not expect to have its case dismissed rather than stayed on "international comity" grounds merely because the plaintiff brought suit in New York rather than in New Jersey.

Thus, in the Third Circuit, the court will authorize a stay, but not a dismissal. *See Philadelphia Gear Corp. v. Phila. Gear de Mexico, S.A.*, 44 F.3d 187 (3d Cir. 1994). Such a stay is considered to be justified not as a matter of "deference" to a foreign proceeding (as is the case in the Second Circuit)[5], but simply as a matter of recognizing and enforcing a foreign judgment. In the Third Circuit, if the

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Second Circuit declined to report the reasoning behind its affirmance of the District Court's judgments of dismissal, except to state that it was "for substantially the reasons set forth in the opinion of the district court," App. at 16a, thus argues for, rather than against, granting this Petition.

[5] *See, e.g., Pravin Banker Assocs., Ltd. v. Banco Popular del Peru,* 109 F.3d 850, 853 (2d Cir. 1997).

foreign bankruptcy "shares our policy of equal distribution of assets," *Philadelphia Gear*, 44 F.3d at 193, a domestic stay may issue where "foreign law mandates the issuance or at least authorizes the request for the stay." *Id.*

Further, according to the Third Circuit, the interests of international comity are best served by first proceeding to judgment on the domestic claim and by attempting to have that judgment recognized abroad. *Remington Rand Corp.–Delaware v. Bus. Sys. Inc.*, 830 F.2d 1260, 1273 (3d Cir. 1987). If the foreign court declines to recognize the domestic judgment, however, the trial court is then free to "to reconsider a proper remedy." *Id.* On the other hand, if the foreign court does recognize the domestic judgment, any domestic attachments can be lifted (in whole or in part), in order to provide assets for distribution by the trustee in the foreign proceeding. *Id.* (concluding that "the solution to this very difficult problem must follow four discrete steps"). In this manner, the Third Circuit thus held that affording comity to a Dutch "suspension of payments" proceeding was appropriate:

> But only if and to the extent that the Dutch court is willing to recognize the American judgment in its proceedings. This solution would afford appropriate protection to an American creditor, yet also acknowledge the primary role of the Dutch court in equitably distributing the available funds.

Remington Rand, supra., 830 F.2d 1260, 1273 (3d Cir. 1987).

The Second Circuit, by contrast, declines generally to uphold domestic attachments against the claims of a foreign trustee in liquidation, *Cunard S.S. Co. Ltd. v. Salen Reefer Serv. AB*, 773 F.2d 452, 457 (2d Cir. 1985), and, as the instant case demonstrates, will dismiss a domestic plaintiff's claim without regard to whether the foreign court will

ultimately adjudicate the claim. This leaves the domestic claimant at best with possibly insurmountable statute of limitations issues to contend with at a later date and at worst with no recourse whatever. Unlike the Third Circuit, which focuses pragmatically on what a foreign court *does* with a domestic claim in a particular case, the Second Circuit confines its analysis of foreign law to a more or less abstract review of the letter of foreign law and its "fundamental procedural fairness."[6] *Id.*

To resolve the conflict between the circuits and to articulate a uniform rule that should apply in all cases where abstention is sought on the ground of "international comity," Petitioner respectfully requests that this Court grant the Petition.

C. The Judgments Below Cannot be Supported on the Alternative Ground of *Forum Non* Conveniens.

Finally, Petitioner briefly addresses an issue identified in *Quackenbush* itself, namely, whether the judgments below could be supported on the alternative ground of *forum non conveniens*. 517 U.S. at 721-23. As *Quackenbush* states, federal courts "abstain out of deference to the paramount interests of another sovereign," whereas

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[6] As an ironic consequence, in this case, by the time the District Court had concluded that the LQSP was fundamentally "fair," the Mexican Government – by repealing the LQSP – had concluded that it was not. (This turn of events moreover illustrates that where it is the foreign policy of the United States to encourage reform in another nation's laws, a federal court, by declaring that a foreign law is "fair," may actually be working counter to our national interest in "international comity.")

forum non conveniens "has historically reflected a far broader range of considerations." *Id.* (citations omitted). Below, however, none of the parties and neither of the courts ever purported to address "the multifarious factors relevant to the forum non conveniens determination," *American Dredging Co. v. Miller*, 510 U.S. 443, 448 (1994), and the record would not support affirmance of the judgments on that alternative ground.

II. WHETHER FEDERAL OR STATE LAW GOVERNS ABSTENTION IN A "DIVERSITY" CASE.

Petitioner also seeks review of the decisions below that the "decision, whether or not to grant comity, is to be determined under New York state law." App. at 5a. Such a holding appears to be unprecedented as the basis for a federal court to decline to exercise jurisdiction conferred by Congress; is in conflict with decisions of the Seventh and Eleventh Circuit Courts of Appeals, both of which have held that the issue of "international abstention" is one of federal law, *see Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1518 n.7, 1520 n.7 (11th Cir. 1994); *Ingersoll Milling Machine Co. v. Granger*, 833 F.2d 680, 685 n.1 (7th Cir. 1987); and is inconsistent with this Court's rulings in abstention cases, *see, e.g., Quackenbush, supra*, 517 U.S. at 709.

As the lengthy footnote in the District Court's opinion indicates, App. at 5a n. 3, its holding (which was affirmed by the Second Circuit) is an extension of the Second Circuit's substantial and widely cited jurisprudence concerning "international comity" in various contexts. Thus, a federal court in the Second Circuit with diversity jurisdiction in an "international comity" case may now be obliged to apply state law in deciding whether to exercise the jurisdiction given to it by Congress. Moreover, because the

Second Circuit -- and the Southern District of New York in particular -- is one of the most active venues in the country for international litigation, decisions emanating from their courts are particularly influential in this regard. This Court should grant Petitioner's application for review of the second question presented because of the potential for widespread judicial misadventure that the decisions below create with respect to the proper exercise of federal jurisdiction.

A. Federal Law Controls the Question of Abstention by a Federal Court, Including on the Ground of "International Comity."

A motion to dismiss on the ground of "international comity" asks the district court to "refrain from the exercise of jurisdiction," *Hartford Fire Ins. Co.*, 509 U.S. at 820.

When a motion is made to a federal court to abstain from exercising its jurisdiction (including diversity jurisdiction), federal law controls. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 709 (1996) (diversity jurisdiction); *cf. Bernhardt v. Polygraphic Co. of Am.*, 350 U.S. 198, 202-03, 76 S.Ct. 273, 276 (1956) (a federal court enforces a state-created right by "rules of procedure which it has acquired from the Federal Government"); *see also Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1520 n.12 (11th Cir. 1994) ("the abstention question is a matter of federal law"); *Markham v. City of Newport News*, 292 F.2d 711 (4th Cir. 1961) ("In determining its own jurisdiction, a District Court of the United States must look to the sources of its power and not to acts of states which have no power to enlarge or to contract the federal jurisdiction."). This "basic principle of Federalism" is not affected by the *Erie* doctrine. *Grand Bahama Petroleum Co., Ltd. v. Asiatic Petroleum Corp.*, 550 F. 2d 1320, 1325 (2d Cir. 1977); *cf. Donovan v. City of Dallas*, 377 U.S. 408, 413 (1964) ("That right was

granted by Congress and cannot be taken away by the State."); *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 125 (1981) ("the jurisdiction of the lower federal courts is subject to the plenary control of Congress") (Brennan, J. concurring).

The decisions of the courts below are in conflict with this Court's decisions, and review should be granted in that regard.

B. In a Diversity Action, State Law Considerations of "International Comity" Pertain Only to Issues of "Private International Law."

A brief review of the case law upon which the courts below relied, see App. at 5a-6a, illuminates where and how the District Court (as affirmed by the Second Circuit) went astray, and why similar error elsewhere may well follow upon the same or a similar rationale.

The term "international comity" encompasses several distinct doctrines, including adjudicative comity, "or more precisely, abstention," *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 820 (Scalia, J., dissenting); "prescriptive" comity, or the exercise of a legislature's jurisdiction to prescribe, *id.*; as well as more familiar doctrines such as choice of law, the recognition or enforcement of foreign judgments, and the "act of state" doctrine. Only the first doctrine, adjudicative comity, pertains to the case at hand.

A fundamental error in the Second Circuit (including the courts below) has been to confuse these separate comity doctrines and to cite cases that deal with a distinct doctrine (*e.g.*, the recognition or enforcement of a foreign judgment) as "supporting" their holdings regarding the applicable choice of law.

The New York Court of Appeals had long ago recognized that the decisions of its courts were confined to

questions of "private" international law, *e.g.*, whether "our courts will recognize private rights acquired under foreign laws and the sufficiency of the evidence establishing such rights." *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 387, 151 N.E. 121, 123 (1926). Hence, New York state courts do not abstain on the ground of "international comity."[7]

Thus, none of the cases cited below, *see* App. 5a, 6a, dealt with "abstention" on international comity grounds, but were instead confined to the conceptually distinct "and irrelevant" "private international law" matters of (i) the recognition and enforcement of a foreign judgment, *see, e.g., Drexel Burnham Lambert Group Inc. v. Galadari*, 777 F.2d 877 (2d Cir. 1985); *Clarkson Co., Ltd. v. Shaheen*, 544 F.2d 624 (2d Cir. 1976); *SNR Holdings, Inc. v. Ataka Am., Inc.*, 54 A.D.2d 406, 408-09, 388 N.Y.S.2d 909, 911-12 (1st Dep't 1976); and (ii) whether New York attachments obtained by foreign corporation would be upheld against the claims of a

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[7] Indeed, New York law would prohibit a dismissal or stay of the actions here. With respect to the particular type of financial contracts at issue — *viz.*, promissory notes relating to an "obligation covering in the aggregate, not less than one million dollars" and containing a provision whereby a "foreign corporation . . . agrees to submit to the jurisdiction of the courts of this state," N.Y. Gen. Oblig. Law § 5-1402 (McKinney's 1989) — New York's law of *forum non conveniens* expressly prohibits the dismissal or stay of an action properly brought in New York. *see* N.Y. C.P.L.R. 327(a) (McKinney's 1990). This state law rule represents a legislative expression of the importance of maintaining New York as a financial and commercial center. *See* Sponsor's Memorandum in Support of Legislation (A.703-A)(1984) at 2, *quoted in* 2 Jack B. Weinstein, Harold L. Korn and Arthur R. Miller, *New York Civil Practice: CPLR* ¶ 327.04 at 3-588.

foreign trustee in bankruptcy. *Cunard S.S. Co., Ltd. v. Salen Reefer Serv., AB*, 773 F.2d 452 (2d Cir. 1985); *Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709 (2d Cir. 1987).

In the first group of such cases, the Second Circuit held that in a "diversity" case, New York private law of "international comity" provides the substantive rule of decision regarding the recognition and enforcement of a foreign judgment. That result is widely followed and need not be disputed by Petitioner here. In neither *Clarkson* nor *Drexel*, however, was the plaintiff's claim dismissed. In *Clarkson,* the Second Circuit confirmed the standing of the plaintiff (a foreign trustee in bankruptcy) to sue, and granted its motion for a preliminary injunction, 544 F.2d at 629-30, 633, while in *Drexel*, the Second Circuit actually reversed a judgment of dismissal and remanded the case for additional fact finding as to whether a "decree" of the Sultan of Dubai was enforceable as a foreign judgment under New York law. 777 F.2d at 881. No such enforcement issues are presented here.

In the second group of cases, New York law applied, not as the consequence of the district court's "diversity" jurisdiction, but because state law was expressly incorporated as the substantive rule of decision in specific federal rules and statutes regarding pre-judgment attachments.[8] Holding that New York law, which upholds the rights of a domestic attaching creditor against the claims of a foreign trustee in bankruptcy,[9] did not extend the same

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[8] *See, e.g.*, Rule B(1) of the Supplemental Admiralty Rule of the Federal Rules of Civil Procedure; *see also* Fed. R. Civ. P. 64. Jurisdiction in *Cunard* and *Victrix* was based on the Federal Arbitration Act, not diversity of citizenship.

[9] *See In re Waite*, 99 N.Y. 433, 448 (1865); *see also Disconto Gesellschaft v. Umbreit*, 208 U.S. 570, 582 (1908).

protection to the rights of a foreign attaching creditor, the Second Circuit in *Cunard* and *Victrix* held only that the district courts below did not abuse their discretion in discharging the attachments in favor of foreign bankruptcy proceedings. *Cunard*, 773 F.2d at 460; *Victrix*, 825 F.2d at 715. Neither court abstained from decision.

Petitioner has belabored the above decisions only to emphasize that the cases cited by the courts below were not "abstention" cases. Nonetheless, the Second Circuit has now created a doctrine which holds – erroneously – that the power of a federal court to dismiss a plaintiff's claim on the ground of "international comity" is controlled by state law. It appears to be the failure of the Second Circuit to address "international comity" as an abstention doctrine – notwithstanding this Court's decision in *Hartford Fire* – that led that court to search outside of federal law for the source of a power to dismiss. That search resulted in a fundamental error concerning an important question of federal law.

In sum, both the result (dismissal) and the jurisprudential rationale of the decisions below (application of a supposed pertinent New York "state law of comity") are wrong, and require this Court's review.

So firmly settled is this principle of New York attachment law, the New York Court of Appeals has held, "that perhaps it should not be changed except by the legislature." *Martyne v. Am. Union Fire Ins. Co. of Phila.*, 216 N.Y. 183, 193-94, 110 N.E. 502, 505-06 (1915).

III. WHETHER A DISMISSAL "UPON THE MERITS" CAN BE JUSTIFIED IN ANY EVENT ON THE GROUND OF "INTERNATIONAL COMITY."

Finally, Petitioner seeks to invoke this Court's general supervisory power to rectify the apparent dismissal of Petitioner's claims "upon the merits." *See* Fed. R. Civ P. 41(b).[10] Not only does such a dismissal with prejudice deny Petitioner its day in court on a claim over which the District Court indisputably had jurisdiction, but it forever closes the doors of the courthouse to Petitioner even if Respondents voluntarily discontinue the foreign proceedings, with respect to which Respondents sought "international comity" in the first place, before any judgment regarding the recognition of Petitioner's claims is rendered.[11] In a case of domestic abstention, this Court previously vacated such a dismissal as erroneous. *See American Trial Lawyers Ass'n, New Jersey Branch v. New Jersey Supreme Court*, 409 U.S. 467 (1973). Petitioner seeks a pronouncement and application of the same rule in a case of "international abstention."

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[10] Fed. R. Civ. P. 41(b) provides that "[u]nless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication on the merits."

[11] Of course, any dismissal in such circumstances will leave the domestic claimant with possibly insurmountable statute of limitations issues to contend with when it commences a new action.

In *Costello v. United States*, 365 U.S. 265, 285 (1961), this Court held that the phrase "lack of jurisdiction" in Rule 41(b) should be construed broadly to encompass any dismissal on a "ground not going to the merits." *See also* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2373 at 405 (2d ed. 1995). In *Quackenbush*, the Court held that "the question whether the federal court should decline to exercise its jurisdiction" is an issue that is "separate from the merits." 517 U.S. at 714. Plainly, if the dismissals below are based upon an "abstention" doctrine, the rationale of *Quackenbush* and *Costello* should require the dismissals to have been made "without prejudice."

The issue is complicated by the fact that although both sides briefed and argued the case in both courts below as an "abstention" case, neither court below adverted to "abstention" in its opinion. If this omission implied an intent to dismiss Petitioner's claims "upon the merits," such dismissals under Rule 41(b) would contradict the stated rationale of the decisions themselves, and call for the exercise of this Court's supervisory powers. Simply put, a federal court cannot "abstain" and at the same time dismiss a claim "upon the merits." Review of this question should be granted as well.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECOBAN FINANCE LIMITED,
Plaintiff,

-against-

GRUPO ACERERO DEL NORTE, S.A. DE C.V.,
Defendants.

99 Civ. 10201 (AKH)

MEMORANDUM & ORDER DISMISSING CREDITOR'S CLAIMS BECAUSE OF COMITY

ECOBAN FINANCE LIMITED,
Plaintiff,

-against-

ALTOS HORNOS DE MEXICO, S.A. DE C.V.,
Defendant.

99 Civ. 10202 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiff Ecoban Finance Limited filed this lawsuit to collect on a series of past-due promissory notes totaling $18 million. Ecoban is a New York corporation, and purchased the notes from defendants in Mexico. The notes provide that the parties consent to the jurisdiction of the courts of New York and Mexico for disputes arising thereunder, and that the law of New York will govern the notes unless suit is brought in Mexico, in which case Mexican law will govern.

Defendants are Mexican corporations. Grupo Acerero del Norte, S.A. de C.V. ("GAN") is a conglomerate, and Altos Hornos de Mexico, S.A. de C.V.

("AHMSA") is its subsidiary and Mexico's largest steel producer. Both are parties to Suspension of Payments ("*Suspensionón de Pagos*") proceedings in the Mexican courts,[1] proceedings, much like our Chapter 11 bankruptcy proceedings, intended to relieve debtors from the immediate pressure of creditors' claims and suits in order that they can reorganize their affairs, restructure their debts, and ultimately pay them.

Defendants AHMSA and GAN move to dismiss Ecoban's suits in this Court, pursuant to Fed. R. Civ. P. 12 (c). They ask me, for reasons of international comity, to defer to the Mexican proceedings and the stay of creditors' actions that are a feature of those proceedings. I grant defendants' motions and dismiss the complaints. Having examined the Mexican law on SOP's, and considered expert reports from each side, [2] I hold that the SOP's are not fundamentally procedurally unfair, or in violation of American public policy, and that comity is appropriate in the circumstances of these cases.

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[1]The *Suspensión de Pagos* ("SOP") proceedings are authorized under Title VI of the *Ley de Quiebras y Suspensión de Pagos* ("Law of Bankruptcy and Suspension of Payments") of Mexico. Plaintiff asserts that this law has recently been repealed and replaced by updated and more equitably balanced Mexican legislation, but concedes that the old law still applies to the SOP's of AHMSA and GAN. While these events may evidence Mexican dissatisfaction with the SOP, they do not directly bear on the inquiry this Court must make in deciding whether comity is appropriate in this case. *See infra.*

[2]Under Fed. R. Civ. P. 44.1, questions of foreign law are questions of law, not fact, and I may consider any relevant evidence of foreign law, whether or not it comports with the Federal Rules of Evidence. *See* Fed. R. Civ. P. 44.1; *Euromepa, S.A. v.*

I. Background

Between August and September 1997, GAN issued a series of eleven promissory notes in favor of Ecoban, payable in August and September 1999, in the aggregate amount of $15,000,000. On June 30, 1998, AHMSA issued three more promissory notes in favor of Ecoban, payable on July 6, 1999, in the aggregate amount of $3,000,000. Ecoban alleges that the notes are past due and entirely unpaid, and brought these suits to recover the $18 million due to it.

Defendants, in consequence of alleged adverse economic conditions and a decline in steel prices during 1998 and 1999 causing them financial distress, petitioned the Third Bankruptcy Court of Mexico City on May 18, 1999, in the case of GAN, and the Court of First Instance in Moclova, Mexico on May 24, 1999, in the case of AHMSA, for protection against creditors under the Mexican Suspension of Payments laws. GAN's and AHMSA's petitions were granted on May 24 and 25, 1999, respectively.

In brief, by these laws, Mexican courts are authorized to assist a debtor to avoid bankruptcy liquidation. When an SOP is filed, and the debtor is adjudged to be in suspension of payments by a Mexican court, debt collection actions against the debtor are stayed, and the debtor is precluded from making further payments

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R. Esmerian, Inc., 154 F. 3d 24, 28 n.2 (2d Cir. 1998). Accordingly, I have requested and reviewed expert reports from both sides on the nature of the SOP, and have independently reviewed the Mexican *Ley de Quiebras y Suspensión de Pagos.* Plaintiff offers the opinion of Jose Maria Abascal, Esq., an experienced attorney and professor of law, and defendants offer the opinion of Jamie Garcia Priani, Esq., who has equally impressive qualifications as a lawyer and scholar. *See* Report of Jose Maria Abascal, Esq.; Declaration of Jamie Garcia Priani.

to specific creditors. *See L.Q.S.P.* Art. 408-09 (Mex.) The debtor proposes a preventive agreement with its filing, *see id.* Art. 398, and, following notice to all creditors, the process of asserting and then adjudicating the legitimacy of individual claims begins. *See id.* Art. 405-407. A *sindico,* that is an appointee performing the functions of a caretaker or trustee, is appointed to supervise the debtor, and is charged with reporting illegal or inequitable conduct to the court, which has the power to force the offending debtor into liquidation. *See id.,* Art. 405, 416. The creditors have the power to appoint intervenors, *see id.,* Art. 417, and after the legitimacy of all claims is considered, the creditors meet to approve or reject the preventive agreement. If an agreement cannot be reached, the debtor is forced into liquidation. *See id.,* Art. 419. An agreement cannot be "crammed down," as is sometimes the case in American proceedings. *See* 11 U.S.C. §1129(b)(1); 4 Daniel R. Cowans, *Bankruptcy Law and Practice* §20.27 (6th ed. 1994). In general, an SOP resembles an American Chapter 11 reorganization.

II. Comity is Ordinarily Granted to Foreign Bankruptcy Proceedings

Comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or other persons who are under the protection of its laws." *Hilton v. Guyot,* 159 U.S. 113, 164 (1895). It is particularly appropriate and important with respect to foreign bankruptcy proceedings, where equitable principles demand that all claims against a debtor's limited assets be addressed in a single proceeding. *See Finanz AG Zurich v. Banco Economico, S.A.,* 192 F.3d 240, 246 (2d Cir. 1999) (granting comity to Brazilian liquidation proceeding); *Allstate Life Insurance Co. v. Linter Group, Ltd.,* 994 F.2d

996, 999 (2d Cir. 1993) (Australian liquidation proceeding); *Victrix Steamship Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987) (Swedish bankruptcy); *Cunard Steamship Co. v. Salen Refer Services AB*, 773 F.2d 452, 458 (2d Cir. 1985) (Swedish bankruptcy). Consequently, "American courts regularly defer to such actions." *Finanz AG*, 192 F.3d at 246.

The decision, whether or not to grant comity, is to be determined under New York state law. There is diverse citizenship between plaintiff, a New York corporation, and defendants, Mexican, that is, foreign, corporations. *See* 28 U.S.C. §1332(a)(2). As subject matter jurisdiction in this matter is premised on diversity of citizenship, New York law governs. *See Drexel-Burnham Lambert Group v. A.W. Galadari*, 777 F.2d 877, 880 (2d Cir. 1985); *Cunard*, 773 F.2d at 457.[3] But whether under federal law or New York law, the rule appears to be the same. Under New York law,

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[3]The parties have proceeded under the assumption that federal law governs the issue of comity. Proving the old adage about what happens when one assumes, however, Second Circuit precedent, as noted above, is to the contrary. The parties rely on recent Second Circuit cases such as *Finanz AG* and *Allstate Life Insurance*, which apply federal law to the issue of comity. In neither of these cases, however, was subject matter jurisdiction apparently based on diversity. *See Finanz AG*, 192 F.3d at 245 (finding subject matter jurisdiction under the Foreign Sovereign Immunities Act, 28 U.S.C. §1330); *Allstate Life Insurance Co.*, 994 F.2d at 998 (discussing federal law claims on which actions were based). Neither case discusses choice of law issues, and neither holding upsets the rule of *Drexel* and *Cunard*, that state law comity principles apply in cases where subject matter jurisdiction is based on diversity. *See* Robert Laurence, *The Role, If Any, for the Federal Courts in the Cross-Boundary Enforcement of Federal, State and Tribal Money Judgments*, 35 Tulsa L. Rev 1, 21 (1999); Martin N. Flicks and Michael J. Ireland, *Bankruptcy and the Problems of Multi-Jurisdictional Workouts*, 592 PLI/Comm. 415, 449 (1991).

courts will defer to foreign bankruptcy proceedings unless the foreign court lacks jurisdiction over the bankrupt, or the foreign proceeding will result in injustice to New York citizens, prejudice to creditors' New York statutory remedies, or violation of the laws or public policy of New York. *See In re Waite*, 2 N.E. 440, 449, 99 N.Y. 433, 448 (N.Y. 1885); *SNR Holdings, Inc. v. Ataka America, Inc.*, 388 N.Y.S.2d 909, 911 (N.Y. App. Div. 1st Dept. 1976); *Cole v. Cunningham*, 133 U.S. 107, 122-23 (1890) (discussing New York law); *Drexel*, 777 F.2d at 880 (same); *Clarkson Co. v. Shaheen*, 544 F2d 624, 629 (2d Cir. 1976) (same). Federal law is to the same effect. *See Finanz AG*, 192 F.3d at 246. In short, comity should be granted to a foreign bankruptcy (or SOP) proceeding as long as fundamental standards of procedural fairness are observed, and state or federal law and public policy are not violated. *See id.* As discussed below, no expectations to the exercise of comity are applicable in this case.

III. Comity is Appropriate in this Case

It is undisputed that the Mexican courts are of competent jurisdiction, and indeed that Ecoban has, up to this point, participated in the SOP actions in Mexico. The only questions remaining are whether the SOP respects fundamental procedural fairness, and whether it violates federal or New York state law and policy. In my opinion, the Mexican law does not violate fundamental principles of procedural fairness, or the public policy of New York or of the United States, and I therefore hold that comity should be extended to the SOP's.[4]

[4]The parties make reference to the eight illustrative factors regarding procedural fairness as laid out in *Allstate Life Insurance*, 994 F.2d at 999. These factors generally indicate that the foreign procedures must provide adequate notice and opportunity to be heard, and must treat equal creditors equally, but most of the factors contemplate a liquidation and are not clearly relevant or applicable in the context of an SOP.

As the discussion of the SOP procedures above suggest, it is clear that creditors are given a legitimate opportunity to make their claims, and are afforded with avenues through which grievances may be raised and addressed during the SOP process. Nothing in the Mexican law indicates that the ability of foreign creditors to participate in the process is in any way limited, or that such creditors are otherwise treated differently from Mexican creditors. Nor do I find anything inherently unfair about the SOP process. It is true, of course, that through suspending debt payments and collection actions, and forcing the parties to renegotiate, the SOP could affect plaintiff's ability to collect on its promissory notes in full and when due. But this is not significantly more true in the Mexican SOP than it is in any bankruptcy setting, including American Chapter 11 reorganizations. Though some of the Mexican procedures may differ significantly from their American counterparts, it is not necessary for this Court to "split hairs to determine that the [Mexican] law, in general, provides a fair forum in which to litigate [plaintiff's] claims." *Allstate Life Insurance,* 994 F.2d at 999. It suffices to say that nothing in the Mexican law is so prejudicial as to offend the public policy of New York or the United States.

Indeed, plaintiff largely concedes the fairness of the Mexican law as written, and instead claims that American public policy is violated by the operation of the SOP in practice. Specifically, plaintiff, through its expert, contends that SOP adjudications can last up to 10 years, and that this potential for long delay in debt recovery forces major creditors to accept unfavorable terms on renegotiation, or risk no effective recovery at all. Defendants' expert disputes this assertion, claiming that most SOP's are in fact completed in one to three years. *See* Parini Reply Declaration ¶5. I needn't resolve this difference. These matters are complicated, and many competing interests

have to be balanced. Whether in a chapter 11 proceeding in our courts, or an equivalent proceeding in a foreign court, the potential for delay exists, and perhaps more delay than would be ideal. I do not find this potential offensive to the law or public policy of New York or the United States. Plaintiff does not claim any specific prejudice and, to the extent that AHMSA and GAN may soon emerge from suspension of payments, as plaintiff has asserted in oral argument and in various letters and submissions to the court, plaintiff's argument is even more speculative and less meritorious.

Along similar lines, plaintiff argues that AHMSA and GAN entered the SOP not because of financial or cash flow difficulties, but in a bad faith effort to force its major creditors to renegotiate their loans and thereby make AHMSA and GAN more attractive to potential merger partners. Allowing the Mexican companies to "get away with" this scheme, Ecoban urges, would violate American public policy. The proper inquiry on a comity motion, however, is not into the motives of a debtor in the foreign proceeding, but into the foreign court's ability to address, and redress, improper conduct. I am satisfied that there are sufficient opportunities for the creditors of AHMSA and GAN to raise the debtors' alleged bad faith and inequitable conduct before the Mexican tribunals hearing the SOP's, and those are the appropriate venues for plaintiff to do so. [5]

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[5] Submissions to the Court made subsequent to oral argument in this matter indicate that one aggrieved GAN creditor succeeded in overturning GAN's declaration of suspension of payments before the Superior Court of Justice of the Federal District of Mexico, a Mexican appellate court. By order dated June 20, 2000, that court vacated GAN's SOP declaration on the ground that GAN's proposed preventive agreement had not been previously approved by GAN shareholders, as required by Mexican law. *See* Opinion of Jose Maria Abascal, Esq. dated July 11,

Equally without merit is plaintiff's claim that comity is inappropriate because the promissory notes contain a forum selection clause designating New York as a forum for dispute resolution. It is well settled in this Circuit that such forum selection clauses will not preclude the exercise of comity. *See Finanz AG,* 192 F.3d at 247; *Allstate Life Insurance,* 994 F.2d at 1000. I also reject plaintiff's contention that the early conversion of plaintiff's claims into Mexican pesos under the SOP violates public policy. While it is true that a conversation procedure may be fundamentally unfair if it "would render a debt unenforceable or valueless," *Finanz AG,* 192 F.3d at 250, there is no reason to believe that this would be the case here. As the Second Circuit observed in *Finanz AG,* this provision for early conversion of claims is found in American bankruptcy law as well, *see id.;* 11 U.S.C. §502 (b), and absent the circumstance discussed above, nothing about such a procedure violates New York or United States public policy.

IV. Conclusion

In the end, we are left with the simple case of an American creditor of a Mexican corporation asking this Court to give it a preference over other creditors by

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2000, Exh. 1,2. The order vacating the GAN SOP, however, was stayed pending GAN's appeal by order of the Superior Court dated June 28, 2000. As a result of this stay, the GAN SOP remains in effect, and proceedings continue. *See* Declaration of Jaime Rene Guerra Gonzalez ¶¶9-10, Exh. C. Because GAN's SOP proceedings continue in Mexico, these events do not alter my comity analysis. In the event that a final judgment dismissing GAN's SOP petition is entered in Mexico, Ecoban will, of course, be free to re-file its claims in this Court. These proceedings, it appears, contradict plaintiff's argument that Mexican practice is ineffective to challenge a debtor's bona fides.

releasing it from the obligations imposed by Mexican bankruptcy law. Principles of international comity and a strong public policy favoring the administration of all claims against a debtor in a single forum preclude this Court from doing so. *See Cunard*, 773 F.2d at 459; *see also Credit Agricole Indosuez v. Rossivskiy Kredit Bank*, 729 N. E.2d 683, 94 N.Y.2d 541, 551 (N.Y. 2000) (following *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308 (1999), in holding that prejudgment creditor may not enjoin foreign debtor from dissipating assets, and disapproving of contrary practice of English courts under *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, 2 Lloyd's Rep. 509). The public policy and procedural fairness exceptions to the exercise of comity, under both New York and federal law, are intended as shields to protect American citizens and corporations from fundamentally unfair treatment abroad. They are not swords to be wielded by American creditors to frustrate and evade foreign bankruptcy laws.

As the Supreme Court observed over a century ago, in the context of a foreign bankruptcy reorganization:

> [E]very person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy, which binds those in like situation with himself, who are subjects of the government, in respect to the operation and

> effect of their contracts with the corporation, will necessarily bind him .... It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere.

Canada Southern Ry. Co. v. Gebhard, 109 U.S. 527, 537-38 (1883).

In dealing with Mexican corporations, Ecoban can and must be charged with knowledge of the *Suspensión de Pagos,* a law that has been on the books since 1943. *See* Priani Reply Decl. ¶2. Ecoban's unhappiness with the results produced by that law is not a legitimate ground for denying the laws and courts of Mexico the comity to which American legal precedent and basic principles of international cooperation entitle them.

For the foregoing reasons, defendants' motion is granted, and plaintiff's complaints are dismissed on the ground of international comity. All attachments issued by the Court in these matters are dissolved, and all pending motions are denied as moot. The Clerk of Court is directed to mark these matters closed.

SO ORDERED.

Dated: New York, New York
August 8, 2000

S/

Alvin K. Hellerstein
United States District Judge

DOC # 39

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

———————————————————X

ECOBAN FINANCE LIMITED,
Plaintiff,

-against-

GRUPO ACERERO DEL NORTE, S.A. DE C.V.,
Defendants.

———————————————————X

ECOBAN FINANCE LIMITED,
Plaintiff,

-against-

ALTOS HORNOS DE MEXICO, S.A. DE C.V.,
Defendant.

———————————————————X

99 **CIVIL** 10201 (AKH)

Judgment

99 CV 10202 (AKH)

Defendants having moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(c) and the matter having come before the Honorable Alvin K. Hellerstein, United States District Judge, and the Court on August 8, 2000, having rendered its Memorandum and Order granting defendants' motion and dismissing the complaints, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum and Order dated August 8, 2000, defendants' motion to dismiss is

granted and the complaints are dismissed; accordingly, these cases are closed.

Dated: New York, New York
August 11, 2000

JAMES M. PARKISON

Clerk of Court

BY:
S/_____
Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 8/11/00

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE. A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 12th day of January, two thousand and one.

PRESENT: **Thomas J. Meskill,**
Pierre N. Leval,
Guido Calabresi,
Circuit Judges.

ECOBAN FINANCE LIMITED,
Plaintiff-Appellant,

v.

ALTOS HORNOS DE MEXICO, S.A. DE C.V. and GRUPO ACERERO DEL NORTE, S.A. DE C.V.,
Defendants-Appellee.

00-9062(L)
00-9074
(CON)

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Grupo Acerero Del
Norte, S.A. de C.V.

Appeal from the United States District Court for the Southern District of New York (Alvin K. Hellerstein, *D.J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be and it hereby is **AFFIRMED.**

Plaintiff Ecoban Finance Limited appeals from an

order of the United States District Court for the Southern District of New York (Alvin K. Hellerstein, D.J.), dismissing its complaint on grounds of comity, by reason of the ongoing Suspension of Payments proceedings in the courts of Mexico. We affirm for substantially the reasons set forth in the opinion of the district court.

FOR THE COURT:
ROSEANN B. MACKECHNIE
CLERK OF COURT

S/_____
By: Lucille Carr, Deputy Clerk

Supreme Court, U.S.
FILED
JUN 25 2001
CLERK

No. 00-1597

IN THE

Supreme Court of the United States

ECOBAN FINANCE LIMITED,

Petitioner,

v.

GRUPO ACERERO DEL NORTE, S.A. DE C.V.,

Respondent.

ECOBAN FINANCE LIMITED,

Petitioner,

v.

ALTOS HORNOS DE MEXICO, S.A. DE C.V.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Does the Court of Appeals' decision affirming the dismissal of this case on grounds of international comity in favor of prior filed bankruptcy proceedings by the Respondents pending before the Courts of Mexico pursuant to the Law of Bankruptcy and Suspension of Payments present an appropriate issue for review?

2. Whether the courts below erred in holding that, in a case in which the District Court's subject-matter jurisdiction was based upon the diverse citizenship of the parties, New York state law, rather than federal law, governed the question of dismissal on the ground of international comity.

3. Whether the dismissal of Petitioner's complaints on grounds of international comity with prejudice should be reversed for purportedly depriving Petitioner of an adjudication on the merits of Petitioner's underlying claims, where Petitioner's underlying claims will be adjudicated either by the Courts of Mexico in the Suspension of Payment Proceedings or if the Mexican Suspension of Payment Proceedings are not completed, the District Court has stated that it will adjudicate such claims.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, (i) Respondent Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") certifies that: Grupo Acerero del Norte, S.A. de C.V. ("GAN") is the parent corporation of AHMSA and no publicly held corporation owns 10% or more of the stock of AHMSA; and (ii) Respondent GAN certifies that there is no parent corporation of GAN and no publicly held corporation owns 10% or more of the stock of GAN.

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BRIEF OF RESPONDENTS ALTOS HORNOS DE MEXICO, S.A. DE C.V. AND GRUPO ACERERO DEL NORTE, S.A. DE C.V. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE CASE

A. Statement of Facts

1. Background

Respondent Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") is a corporation organized under the laws of the United Mexican States. AHMSA has been in the steel industry for more than 50 years and is the largest steel producer in Mexico. Respondent Grupo Acerero del Norte, S.A. de C.V. ("GAN") is a holding company of subsidiaries in the business of manufacture, distribution and sale of steel, fertilizer, petrochemicals, and oxidants. AHMSA is the main operating company of GAN.

As a result of significant financial distress, GAN, on May 18, 1999, and AHMSA, on May 24, 1999, filed petitions to be declared in Suspension of Payments ("SOP") pursuant to the Law of Bankruptcy and Suspension of Payments ("Ley de Quiebras y Suspension de Pagos" or "LQSP") (the "Mexican Bankruptcy Law") in the Mexican Courts. A Suspension of Payments Proceeding is much like a chapter 11 proceeding under U.S. law, and is intended to relieve a debtor from the immediate pressure of creditors' claims and suits in order that they can reorganize their affairs and restructure their debts. *See* Declaration of Jaime Garcia Priani, dated December 22, 1999 ("Garcia Priani Decl.") ¶ 22 (Respondents' Appendix ("Respondents' App.") at 16a);

Memorandum & Order Dismissing Creditor's Claims Because of Comity, dated August 8, 2000 ("District Court's Opinion") (Petitioner's Appendix ("Petitioner's App.") at 2a, 4a).

The Mexican Courts, by judgments issued on May 24, 1999 in the case of GAN, and on May 25, 1999 in the case of AHMSA, declared each to be in Suspension of Payments under the LQSP (the "SOP Judgments").

Upon entry of the SOP Judgments, Articles 408, 409 and 410 of the LQSP impose an automatic stay of claims against the debtor. *See* Garcia Priani Decl. ¶¶ 12, 54 (Respondents' App. at 6a-7a, 28a-29a). Article 411 of the LQSP states that the granting of security interests by the debtor shall be ineffective as against creditors during the pendency of a suspension of payments proceeding. *Id.* ¶¶ 13, 54 (Respondents' App. at 7a, 28a-29a).

Accordingly, a moratorium on legal actions against AHMSA and GAN became effective as of the entry of the SOP Judgments. *Id.* ¶¶ 12-14, 54 (Respondents' App. at 6a-9a, 28a-29a). AHMSA and GAN are not permitted to pay any pre-petition claims and all suits against AHMSA and GAN that have as their purpose claiming compliance with a general unsecured monetary obligation are stayed. *Id.* ¶ 12 (Respondents' App. at 6a-7a). The Suspension of Payments Proceeding is intended to be comprehensive as to all of AHMSA's and GAN's assets located in and outside of Mexico, including, but not limited to, those assets located in the United States. *Id.* ¶ 14 (Respondents' App. at 8a-9a). Also, all claims against AHMSA and GAN, whether or not in litigation, can and must be brought before the Mexico Court. *Id.* ¶ 16 (Respondents' App. at 9a-10a). The equitable

and orderly reorganization of AHMSA and GAN, as is the case with any bankruptcy proceeding under U.S. Bankruptcy Code, requires that all claims against the limited assets of the debtor proceed in a single proceeding.

B. Proceedings Below

1. Nature of the Instant Actions

Petitioner Ecoban Finance Limited ("Ecoban") is a creditor of AHMSA and GAN. On June 13, 1999, Ecoban appeared in court in Mexico and acknowledged receipt of AHMSA's SOP notice. On June 18, 1999, Ecoban appeared before another court in Mexico and acknowledged receipt of GAN's SOP notice.

On October 1, 1999, more than three months *after* Ecoban first appeared in the AHMSA and GAN SOP Proceedings in Mexico, Ecoban, in violation of the SOP Proceedings and more specifically, the LQSP's automatic stay, commenced these actions by filing separate Complaints against GAN and AHMSA in the Southern District of New York. The Complaints allege that AHMSA and GAN have defaulted in payment on certain promissory notes which became due and payable roughly two to four months *after* the entry of the SOP Judgments. The basis of the Complaints are identical to the claims Ecoban has made in the GAN and AHMSA SOP Proceedings pending in Mexico.

By Orders To Show Cause dated October 19, 1999 and October 20, 1999, Ecoban moved for Orders of Attachment. On October 28, 1999, the District Court granted the Orders of Attachment, but without prejudice to the right of GAN and AHMSA to move to dismiss the actions and vacate the attachments on grounds of international comity.

The Complaints filed herein commencing these actions as well as all subsequent steps taken by the Ecoban to attach AHMSA's and GAN's assets thus constitute a violation of the automatic stay imposed by the LQSP.

Ecoban filed motions for summary judgment against AHMSA and GAN on November 30, 1999 and December 8, 1999, respectively. GAN and AHMSA filed their motions to dismiss the Complaints and in opposition to the motions for summary judgment on December 23, 1999. In connection with the motions, GAN and AHMSA included the sworn declaration of an expert on Mexican bankruptcy law, together with a full translation of the LQSP. Ecoban in its opposition submitted an extensive report by its own expert in the bankruptcy laws of Mexico.

2. The District Court's Decision

On August 8, 2000, the District Court dismissed the Complaints on the ground of international comity. The District Court also denied Ecoban's motion for summary judgment as moot and vacated the Orders of Attachment.

The District Court, in a well-reasoned, 12-page decision, held that "[h]aving examined the Mexican law on SOP's, and considered expert reports from each side, I hold that the SOP's are not fundamentally procedurally unfair, or in violation of American public policy, and that comity is appropriate in the circumstances of these cases." District Court's Opinion (Petitioner's App. at 2a) (footnote omitted). The District Court concluded that "[i]n general, an SOP resembles an American Chapter 11 reorganization." *Id.* (Petitioner's App. at 4a).

The District Court held that U.S. courts should defer to foreign bankruptcy proceedings as long as fundamental standards of procedural fairness are observed, and state and federal public policy are not violated. *Id.* (Petitioner's App. at 6a). Finding no reason to deny the exercise of comity in this case, the District Court concluded:

> In the end, we are left with the simple case of an American creditor of a Mexican corporation asking this Court to give it a preference over other creditors by releasing it from the obligations imposed by Mexican bankruptcy law. Principles of international comity and a strong public policy favoring the administration of all claims against a debtor in a single forum preclude this Court from doing so. . . . The public policy and procedural fairness exceptions to the exercise of comity, under both New York and federal law, are intended as shields to protect American citizens and corporations from fundamentally unfair treatment abroad. They are not swords to be wielded by American creditors to frustrate and evade foreign bankruptcy laws.

Id. (Petitioner's App. at 9a-10a) (citations omitted).

3. The Second Circuit's Decision

On January 12, 2001, the United States Court of Appeals for the Second Circuit affirmed the District Court in a Summary Order.

ARGUMENT

I. THE DISMISSAL OF PETITIONER'S CLAIMS ON GROUNDS OF INTERNATIONAL COMITY WAS PROPER.

A. The Enforcement of the Mexican Bankruptcy Law, Like Chapter 11 of the U.S. Bankruptcy Code, Requires the Dismissal of Petitioner's Wrongfully Commenced Actions.

For over a century, this Court has defined comity as:

> the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895). The District Court applied this principle to determine whether or not to grant recognition to the legislative and judicial acts of the Republic of Mexico, namely the Mexican Bankruptcy Law or LQSP.

The importance of extending comity to bankruptcy proceedings has been well-established for over 100 years. This Court first articulated the particular need to recognize foreign reorganization proceedings in *Canada Southern Railway v. Gebhard*, 109 U.S. 527 (1883). In that case, which involved a challenge by citizens of New York to a scheme of arrangement for the Canada Southern Railway Company, this Court explained that:

> Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought

> to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries.

Id. at 539. Significantly, this Court further explained:

> [E]very person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy, which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. . . . It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere.

Id. at 537-38.

In light of these principles, this Court enforced the terms of the Canadian "scheme of arrangement" which required the dismissal of the action filed in the United States

subsequent to the authorization and approval of the scheme. Petitioner cannot distinguish *Canada Southern Railway* from this case.

In this case, the Petitioner commenced its actions against debtors AHMSA and GAN after they had been declared in bankruptcy by the Mexican Courts. The District Court held that Petitioner, doing business with Mexican corporations, was charged with the knowledge of the Mexican Bankruptcy Law and could not now circumvent what that law mandates. District Court's Opinion (Petitioner's App. at 11a). Accordingly, once the District Court determined that the Mexican Bankruptcy Law accords with U.S. principles of fundamental fairness, the doctrine of international comity required the recognition and enforcement of the Mexican Bankruptcy Law. *Id.* (Petitioner's App. at 6a). Petitioner does not question either the factors that the District Court considered in determining whether to recognize the Mexican Bankruptcy Law or the District Court's application of those factors to the Mexican Bankruptcy Law. In fact, the District Court found that Petitioner conceded that the Mexican Bankruptcy Law is essentially fair as written. *Id.* (Petitioner's App. at 7a). Thus, Petitioner's difficulty is not with the District Court's application of international comity, but rather with the result mandated by the terms of the Mexican Bankruptcy Law.

Significantly, the District Court's recognition and enforcement of the Mexican Bankruptcy Law is no different than if the District Court recognized and enforced the U.S. Bankruptcy Code had AHMSA or GAN commenced a chapter 11 proceeding in the United States. In particular, Section 362(a) of the U.S. Bankruptcy Code provides for an automatic stay of:

> the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1). Similarly, Articles 408 through 410 of the Mexican Bankruptcy Law require an automatic stay of all actions pending against debtors. Garcia Priani Decl. ¶¶ 12, 54 (Respondents' App. at 6a-7a, 28a-29a). Specifically, Article 409 provides that:

> ARTICLE 409. With the exception of claims for debts for employment obligations, for food and alimony, or for claims with a guarantee, all suits against the debtor that have as their purpose claiming compliance with a monetary obligation shall be suspended; but actions tending to prevent damage to things covered by the litigation or to conserve entirely the rights of the parties may be undertaken.

Under both the U.S. Bankruptcy Code and the Mexican Bankruptcy Law, the effect of an automatic stay on an action commenced outside the bankruptcy proceeding depends on one key procedural fact — when the action was filed. *Hamm v. R.H. Macy & Co.*, No. 93 Civ. 1446 (LAP), 1994 WL 507717, at *2 n.1 (S.D.N.Y. Sept. 13, 1994). If a bankruptcy proceeding has been commenced under chapter 11 and a creditor subsequently attempts to bring an action outside of the chapter 11 bankruptcy proceeding, whether in another forum in the United States or abroad, that action

will be dismissed because it is deemed wrongfully commenced. *See, e.g., E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank*, 236 F.3d 117, 120-21 (2d Cir. 2001); *Hamm*, 1994 WL 507717, at *2 n.1. Similarly, the application of the Mexican Bankruptcy Law to those circumstances requires that the subsequent action, brought outside the bankruptcy proceeding, whether in a forum in Mexico or abroad, be dismissed for the same reason. Garcia Priani Decl. ¶¶ 12-16 (Respondents' App. at 6a-10a).

However, if a party commences a chapter 11 bankruptcy proceeding after an action has been filed and is pending, the action will be stayed pursuant to Section 362 of the U.S. Bankruptcy Code because it would be deemed wrongfully continued. *Hamm*, 1994 WL 507717, at *2 n.1. Articles 408 through 410 of the Mexican Bankruptcy Law mandate the same result. Garcia Priani Decl. ¶¶ 12, 54 (Respondents' App. at 6a-7a, 28a-29a).

The District Court properly concluded that it would as a matter of international comity grant recognition to the judicial acts of the Mexican Courts in declaring AHMSA and GAN in Suspension of Payments under the Mexican Bankruptcy Law. It is then a matter of the enforcement of the Mexican Bankruptcy Law that determines whether the action is to be dismissed or stayed. Here, because the lawsuits were commenced more than three months *after* the debtors SOP Proceedings had been commenced, under the Mexican Bankruptcy law the actions had been wrongfully commenced, in that the commencement of the actions is a violation of Mexican law, and the proper remedy is for the actions to be dismissed.

As stated above, the result in this case would have been no different if the Respondents filed a chapter 11 proceeding

and the Petitioner then commenced an action in a court outside the bankruptcy proceeding. As the U.S. Bankruptcy Code has long recognized, the protection of debtors and creditors requires centralization of all actions involving a debtor's property in one forum. *See SEC v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000); 3 Collier on Bankruptcy ¶ 362.03, at 362-13-14 (15th ed. 2001). But if Petitioner's contention is true, then actions against chapter 11 debtors may be commenced or continued in any forum outside a chapter 11 bankruptcy proceeding, whether in the United States or abroad, in violation of Section 362(a) of the U.S. Bankruptcy Code. This result would undermine the entire structure of the U.S. Bankruptcy Code.

Thus, international comity requires that once a foreign reorganization scheme, such as the Mexican Bankruptcy Law, is held fundamentally fair, it must be enforced as the U.S. Bankruptcy Code would be enforced. Because the automatic stay provision of the U.S. Bankruptcy Code is consistently enforced without the implication of the doctrine of abstention, so too should the enforcement of the automatic stay provision of the Mexican Bankruptcy Law.

B. The Circuit Courts of Appeal Are In Accord.

Petitioner misrepresents to the Court that there is a "split" in authority among the circuit courts of appeal with respect to the propriety of the dismissal on grounds of international comity. Petitioner's Brief at 11. There is not.

Petitioner cites *Posner v. Essex Insurance Co., Ltd.*, 178 F.3d 1209 (11th Cir. 1999), *Ingersoll Milling Machine Co. v. Granger*, 833 F.2d 680 (7th Cir. 1987) and *Boushel v. Toro Co.*, 985 F.2d 406 (8th Cir. 1993) as inconsistent with

the holding of the Second Circuit. However, those cases do not even address the kind of comity at issue in this case — that is, comity which recognizes a foreign law, and in particular a foreign bankruptcy scheme, the enforcement of which requires the dismissal of a case wrongfully commenced in the United States.

Rather, *Posner*, *Ingersoll*, and *Boushel* address a different form of comity known as "comity of courts." *See Posner*, 178 F.3d at 1209 (stay of Florida action in favor of pending parallel proceeding in Bermuda); *Ingersoll*, 833 F.2d at 680 (granting stay of employment action after judgment rendered in parallel Belgium proceeding); *Boushel*, 985 F.2d at 406 (affirming stay of action in favor of simultaneously pending Canadian proceeding). In these cases, the issue is whether an action properly commenced in the United States should be stayed in light of a parallel foreign proceeding, also properly commenced. This kind of comity is analogous to the doctrine of *forum non conveniens* which considers the dismissal of an action in favor of another forum which is more convenient in terms of witnesses and evidence.[1] In *Posner*, *Ingersoll*, and *Boushel*, as with a *forum non conveniens* case, the only issue was which forum is better suited to adjudicate the case, not, as it is here, whether the action was wrongfully commenced.

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[1] Significantly, in *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 721 (1996), this Court held that when applying the doctrine of *forum non conveniens*, a federal court may relinquish jurisdiction in favor of another forum. This Court noted that that "our abstention doctrine is of a distinct historical pedigree, and the traditional considerations behind dismissal for *forum non conveniens* differ markedly from those informing the decision to abstain." *Id.* at 722-723.

Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A., 44 F.3d 187 (3d Cir. 1994), which is the only case cited by Petitioner which addresses whether to extend comity to recognize a foreign bankruptcy proceedings, is completely consistent with the Second Circuit's holding in this case.[2] Petitioner misrepresents to the Court that *Philadelphia Gear* holds that the Third Circuit will only stay, rather than dismiss, an action filed in the United States against a debtor which is the subject of a foreign bankruptcy proceeding. Petitioner's Brief at 13. This assertion is incorrect.

As stated above, under both the U.S. Bankruptcy Code and the Mexican Bankruptcy Law, the effect of the automatic stay is determined by the sequence of the debtor's filing of the bankruptcy and the creditor's filing of the separate action. Where a creditor's action is already pending before the debtor files for bankruptcy protection, the creditor's action shall be stayed or transferred because its continuation is wrongful. If the bankruptcy is filed first, and a creditor attempts to circumvent the proceeding by filing an action outside of the bankruptcy proceeding, the creditor's action will be dismissed because it was wrongfully commenced.

Unlike Ecoban in this case, the creditor in *Philadelphia Gear* filed its action against the debtor in the United States over a year *before* the debtor filed for protection under the Mexican Bankruptcy Law. 44 F.3d at 190. In light of the

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[2] Although the Petitioner cites to *Remington Rand Corp.-Delaware v. Business Systems, Inc.*, 830 F.2d 1260 (3d Cir. 1987), in which the defendant entered suspension of payment proceedings in The Netherlands, that case did not deal with the issue of dismissing an action filed in the U.S. because of the existence of a pending foreign bankruptcy proceeding.

debtor's supervening Mexican bankruptcy proceeding, the Third Circuit recognized the Mexican Bankruptcy Law and properly enforced its terms by directing a stay or transfer of the U.S. action. *Id.* at 193. The Court specifically held that the debtor presented a "*prima facie* case that Mexican Law mandates a stay of the district court proceedings." *Id.* The Court also noted that "[c]onceivably, on remand the district court might conclude that it should transfer the proceedings to the Mexican court. We do not reach that issue and thus express no opinion on the point." *Id.* at 194 n.7.

Thus, the holdings of the Third Circuit in *Philadelphia Gear* and the Second Circuit in this case are completely consistent. Both Circuits have recognized the Mexican Bankruptcy Law as fundamentally fair and then have enforced it as Mexico would. Accordingly, the different outcomes were not a result of inconsistent applications of the doctrine of international comity. Rather, it is the application of the Mexican Bankruptcy Law itself which mandated different outcomes in the cases, depending upon whether the U.S. creditor filed its action before or after the debtor's commencement of the bankruptcy proceeding.

C. *Quackenbush* and *Hartford Fire Insurance* Do Not Address the Comity at Issue in this Case.

Ecoban's assertion that this action should have been evaluated under *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706 (1996), which is a discussion of the doctrine of the *Burford* abstention, should be rejected. Ecoban essentially seeks to have this Court ignore the well established standard of international comity, especially in the context of foreign bankruptcy reorganizations, and apply the doctrine of the *Burford* abstention, which addresses a completely different kind

of comity. *Quackenbush*, like *Posner*, *Ingersoll*, and *Boushel*, addresses the application of the "comity of courts" to determine the more appropriate forum as between parallel proceedings, neither of which were improperly commenced or continued.

In *Quackenbush*, the California Insurance Commissioner, in its capacity as trustee for an insolvent insurance company, brought a state court action against Allstate Insurance Company for breach of reinsurance agreements. 517 U.S. at 709. The action was removed to federal court on grounds of diversity. The issue presented was whether the District Court had been correct in remanding the action to state court under "the abstention doctrine first recognized in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)." *Id.* This Court held that a federal court sitting in diversity should have exercised its jurisdiction to adjudicate certain state law claims which were simultaneously being adjudicated in a state insolvency proceeding. *Id.* at 731.

Quackenbush does not even purport to address issues of international comity. Indeed, to the contrary, this Court held that its ruling was limited to the *Burford* abstention, a doctrine that arises out of principles of federalism which may require a federal court to yield in certain situations of "federal-state conflict." *Id.* at 723 (citation omitted). Further, this Court specifically held that its ruling did not apply to damages action under the doctrine of *forum non conveniens*, noting that such doctrine dealt with cases where "the alternative forum is abroad." *Id.* at 722 (citation omitted).

More significantly, because no state law can prohibit the filing or continuation of a federal action, whether the federal court in *Quackenbush* was precluded from adjudicating certain claims by another forum's law was not at issue as it is in this case.

Finally, to the extent that Petitioner asserts that *Hartford Fire Insurance Co. v. California*, 509 U.S. 764 (1993), is relevant, that case addresses a third form of comity, known as legislative comity, which is also different from that applied in this case. *Hartford Fire Insurance* did not involve whether to grant comity to a separate ongoing proceeding in a different forum. In fact, in *Hartford Fire Insurance*, there was no issue of concurrent jurisdiction. Rather, *Hartford Fire Insurance* dealt with the extent of the extraterritorial reach of the Sherman Act (15 U.S.C. § 1, *et seq.*) to British reinsurance companies located in London and the comity concerns raised in interpreting the proper scope of the Act. *Id.* at 779 n.9.

Accordingly, because neither *Quackenbush* nor *Hartford Fire Insurance* dealt with the comity issues raised in this case, where the application of another forum's law requires the preclusion or transfer of an action wrongfully commenced or continued, they do not govern these circumstances.

II. FEDERAL LAW GOVERNS THE ISSUE OF INTERNATIONAL COMITY.

As this Court stated in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964) "our relationships with other members of the international community must be treated exclusively as an aspect of federal law." As a result, this Court has consistently applied federal law to cases implicating foreign relations. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000) (federal preemption law applied to state foreign trade law boycotting Burma); *Banco Nacional de Cuba*, 376 U.S. at 425 (federal law determined scope of act of state doctrine regarding Cuban expropriation decree); *Canada S. Ry.*, 109 U.S. at 537

(federal law applied to grant comity to Canadian scheme of arrangement). In addition, this Court has also applied federal law in cases dealing with comity as between federal and state courts. *See Hartford Fire Insurance*, 509 U.S. 764. Therefore, the federal law of international comity should be applied in this case.

However, even if state law of international comity is applied in this case, as the District Court held, the outcome would be the same. District Court's Opinion (Petitioner's App. at 5a-6a). The Second Circuit has summarized the law of New York on the issue of granting comity to foreign bankruptcy proceedings.

> In New York, whose law controls this diversity action, courts will defer to an alien bankruptcy proceeding only so long as the foreign authority has jurisdiction over the bankrupt and "the foreign proceeding has not resulted in injustice to New York citizens, prejudice to creditors' New York statutory remedies, or violation of the laws or public policy of the state."

Drexel Burnham Lambert Group Inc. v. Galadari, 777 F.2d 877, 880 (2d Cir. 1985) (quoting *Clarkson Co. v. Shaheen*, 544 F.2d 624, 629 (2d Cir. 1976)); *Kenner Prods. Co. v. Societe Fonciere et Financiere Agache-Willot*, 532 F. Supp. 478, 479 (S.D.N.Y. 1982) (applying New York law); *In re Stoddard*, 242 N.Y. 148, 151 N.E. 159 (1926); *see SNR Holdings, Inc. v. Ataka Am., Inc.*, 54 A.D.2d 406, 408, 388 N.Y.S.2d 909, 911 (1st Dep't 1976) ("Generally, comity is extended when the foreign court has jurisdiction over the parties and recognition of its actions would not menace public welfare or violate 'some fundamental

principle of justice, some prevalent conception of good morals, [or] some deep-rooted tradition of the common weal.' ") (citation omitted).[3]

Accordingly, because the law of international comity under federal and New York is the same, the question of which law should have been applied would not alter the outcome and is not appropriate for review by this Court.

III. A DISMISSAL WITH PREJUDICE ON GROUNDS OF INTERNATIONAL COMITY DOES NOT PRECLUDE ADJUDICATION OF THE CLAIMS ON THE MERITS.

Petitioner's assertion that it has been denied the opportunity for an adjudication on the merits of its claim is flatly wrong. First, the District Court's dismissal on grounds of international comity was based on deference to the SOP Proceedings in Mexico, which the Court found to be fundamentally fair. Accordingly, Ecoban's claims on the promissory notes against GAN and AHMSA, together with other creditors' claims, will be adjudicated by the Mexican courts presiding over the SOP Proceedings. However, if the SOP Proceedings are not completed and Ecoban's claims are not adjudicated, the District Court specifically held that Ecoban could re-file its claims in that Court. District Court's Opinion (Petitioner's App. at 9a n.5). Thus, while the District Court's judgment as to propriety of extending comity to the SOP Proceedings was final, it did not purport to adjudicate the merits of Ecoban's underlying claims on the promissory notes.

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[3] In *In re Culmer*, 25 B.R. 621, 629 (Bankr. S.D.N.Y. 1982), the court stated that the "[c]ourts in New York have even more narrowly construed the exceptions to the comity doctrine."

Second, to the extent that Ecoban seeks to clarify the scope and finality of the judgment, Fed. R. Civ. P. 60(a) provides the appropriate procedural device. Specifically, Ecoban asserts that the District Court erred in its failure to state explicitly that the judgment was without prejudice as to the underlying merits. At best, the judgment may suffer from a clerical "mistake" which Ecoban may seek to cure pursuant to Fed. R. Civ. P. 60(a). However, to date, Ecoban has not done so. Accordingly, whether the judgment was appropriately dismissed with prejudice is not a proper question for review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — DECLARATION OF JAIME GARCIA PRIANI IN SUPPORT OF THE MOTION OF ALTOS HORNOS DE MEXICO, S.A. DE C.V. TO DISMISS ON THE GROUND OF COMITY AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATED DECEMBER 22, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

99 Civ. 10202 (AKH)

ECOBAN FINANCE LIMITED,

Plaintiff,

– against –

ALTOS HORNOS DE MEXICO, S.A. DE C.V.,

Defendant.

DECLARATION OF JAIME GARCIA PRIANI IN SUPPORT OF THE MOTION OF ALTOS HORNOS DE MEXICO, S.A. DE C.V. TO DISMISS ON THE GROUND OF COMITY AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

JAIME GARCIA PRIANI, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I submit this declaration in support of the motion by Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") to dismiss the instant action on the ground of comity and in opposition to the Plaintiff's motion for summary judgment.

2. I have been duly licensed to practice law by the Federal Government of Mexico for 23 years and hold professional license number 423996. I am the senior member of the law firm of Bufete Garcia Jimeno located in Mexico City, Mexico. I specialize in the practice of civil and commercial litigation and in suspension of payments and bankruptcy law. Since 1982, I have represented many companies involved in suspension of payments under the *Ley de Quiebras y Suspensión de Pagos*, the Law of Bankruptcy and Suspension of Payments (the "Bankruptcy Law" or "B.L.") adopted by Mexico, an English translation of which Bankruptcy Law is annexed hereto as Exhibit A. Since 1993, I have also served as a professor at Universidad Panamericana in Mexico City where I teach courses pertaining to the theory of suspension of payments and bankruptcy under Mexican law. Since 1998, I have also been a professor at Universidad Del Mayab in Merida, Yucatan where I have taught graduate and post-graduate studies of the law of bankruptcy and suspension of payments. Since 1994, I have taught courses in bankruptcy and suspension of payments law to attorneys and accountants and others at the Instituto Para La Especializacion de Ejecutivos in Mexico City. I have also taught courses in civil proceedings at Universidad Anahuac in Mexico City from 1976 to 1983 and taught courses in civil law at Escuela Libre de Derecho in Mexico City from 1984 to 1985. I have participated in many conferences and seminars pertaining to the law of suspension of payments and bankruptcy. If called upon as a witness, I could testify competently from my own knowledge to matters set forth hereinafter.

Appendix

I. *AHMSA DECLARED TO BE IN SUSPENSION OF PAYMENTS.*

3. I have reviewed the Complaint and the Order of Attachment, in each instance together with all exhibits annexed thereto (including, without limitation, the promissory notes at issue). Based on my review of these promissory notes, I am of the view that the Plaintiff herein is a common (unsecured) creditor under Mexican law. I have also reviewed the Declaration of Alfonso Passapora Mora, dated October 27, 1999.

4. I have reviewed the Declaration of Andres Gonzalez Saravia in Support of Motion of Altos Hornos de Mexico, S.A. de C.V. to Dismiss on the Ground of Comity and in Opposition to Plaintiff's Motion for Summary Judgment, which has been filed herewith, together with all exhibits thereto (the "Gonzalez Saravia Declaration"). The Gonzalez Saravia Declaration sets forth at length the financial and other difficulties that led to the filing of the petition by AHMSA to be declared in suspension of payments. I have reviewed the Declaration of Madlyn Gleich Primoff in Support of Motion of Grupo Acerero Del Norte, S.A. de C.V. to Dismiss on the Ground of Comity (the "Primoff Declaration").

5. I have reviewed the petition together with all exhibits thereto (the "Petition") filed by AHMSA on May 24, 1999 with the First Court of First Instance in Monclova (Coahoila) Mexico (the "Mexico Court"). Pursuant to the Petition, AHMSA sought to be declared in suspension of payments under Title VI of the Bankruptcy Law and Articles 394 and 395 thereof in particular. The Bankruptcy Law is derived

from and based on the civil law of Spain, Italy, France and other European nations. A copy of the Petition together with an English translation thereof is annexed to the Gonzalez Saravia Declaration as Exhibit B thereto.

6. As required by Article 398 of the Bankruptcy Law, AHMSA's proposed preventive agreement with its creditors (the "Preventive Agreement") was filed shortly after the Petition. I have reviewed the Preventive Agreement, a copy of which together with an English translation thereof is annexed to the Gonzalez Saravia Declaration as Exhibit C thereto. The Preventive Agreement is a proposed agreement between a company and its creditors which addresses the manner of resolution of all claims against the company. In general, the proposed Preventive Agreement provides for the repayment of the recognized principal amount of all claims against AHMSA within 3 years after the acceptance of such Preventive Agreement by the requisite majorities of AHMSA's creditors. If the Preventive Agreement is accepted by AHMSA's creditors and approved by the Mexico Court, AHMSA's proceedings under the Bankruptcy Law will be successfully concluded.

7. I have reviewed the judgment which was issued by the Mexico Court on May 25, 1999, declaring AHMSA to be in suspension of payments in accordance with Articles 404 through 406 of the Bankruptcy Law (the "SOP Judgment"). A copy of the SOP Judgment together with an English translation thereof is annexed to the Gonzalez Saravia Declaration as Exhibit D thereto.

8. I have been informed based on the Gonzalez Saravia Declaration that notice of AHMSA's suspension of payments

proceeding has been provided by actual notice sent to creditors whose addresses are known, including Plaintiff herein, and by publication in *Diario Oficial de la Federación*, the official Mexican gazette, and in major national newspapers in Mexico (*see* B.L. Arts. 15-17). Publication was effected on October 4, 5 and 6 of 1999.

9. The SOP Judgment, among other things, included a notice to AHMSA's creditors to submit their claims for review within 45 days, beginning the day after the final publication of the SOP Judgment. As set forth in the Gonzalez Saravia Declaration, the last publication of the SOP Judgment was made on October 6, 1999, thereby initially giving creditors until December 13, 1999 (because of weekends and court holidays) to submit their claims. The Mexico Court, however, recently expanded the time for creditors to file claims until March 23, 2000.

10. In accordance with Articles 28-30, 44, 46, 48-52, 54, 57, 415 and 416 of the Bankruptcy Law, the National Chamber of the Transformation Industry (*Camara Nacional de la Industria de Transformacion*), who designated Javier Francisco Gaxiola as its representative, was appointed to serve as AHMSA's trustee by order of the Mexico Court dated August 6, 1999. I have reviewed such order, a copy of which together with an English translation thereof is annexed to the Gonzalez Saravia Declaration as Exhibit E thereto.

11. I have been informed based on the Gonzalez Saravia Declaration that AHMSA has approximately 1,471 creditors, the vast majority of which are common (unsecured) creditors.

II. *THE INSTANT ACTION IS IMPERMISSIBLE AS A MATTER OF MEXICAN LAW.*

12. The Bankruptcy Law contains a statutory stay, prohibiting the commencement and prosecution of this action by Plaintiff herein. Articles 408, 409 and 410 of the Bankruptcy Law provide as follows:

> ARTICLE 408. While the proceeding is in progress, no credit established previously may be required or executed against the debtor, nor may he pay it, the statute of limitations shall not run and the suits cited in the subsequent article shall remain in suspense.
>
> However, such protests as are allowable by law shall be filed.
>
> ARTICLE 409. With the exception of claims for debts for employment obligations, for food and alimony, or for claims with a guarantee, all suits against the debtor that have as their purpose claiming compliance with a monetary obligation shall be suspended; but actions tending to prevent damage to things covered by the litigation or to conserve entirely the rights of the parties may be undertaken.[1]
>
> ARTICLE 410. During the proceedings, the debtor preserves the administration of assets and

[1] A certified translation of Articles 408 and 409 is annexed hereto as Exhibit B

> shall continue the ordinary operations of his business, under the care of the trustee.

Based upon the above-quoted provisions of the Bankruptcy Law, upon the entry of the SOP Judgment, (a) AHMSA is not permitted to pay any prepetition claims, and (b) all suits against AHMSA that have as their purpose claiming compliance with a monetary obligation shall be in suspension except for labor proceedings, proceedings for the collection of alimony payments and proceedings for the enforcement of a security interest in rem (e.g., mortgage, pledge, etc.). In other words, a moratorium on legal actions such as the instant action commenced by Plaintiff became effective as of the entry of the SOP Judgment. Accordingly, the complaint filed herein commencing this action as well as all subsequent steps taken by Plaintiff to attach AHMSA's assets constitute a violation of the stay imposed by the Bankruptcy Law.

13. Pursuant to Article 411 of the Bankruptcy Law, the debtor is prohibited from granting security interests during the pendency of a suspension of payments proceeding. The purpose underlying this provision is to maintain the equality of distributions to all creditors of the same rank and priority, which is a critical underpinning of the Bankruptcy Law. If a debtor is found to have improved the position of one of its creditors vis-á-vis (and at the expense of) its other creditors, the debtor may both be sanctioned by the Mexico Court and also have its suspension of payments proceeding converted to a bankruptcy/liquidation proceeding. Thus, AHMSA cannot permit the attachment by Plaintiff of AHMSA's assets and Plaintiff's attempted circumvention of Mexican law to occur.

14. Pursuant to Articles 6(d), 13, 14, 26 and 408-410 of the Bankruptcy Law, the suspension of payments proceeding is intended to be comprehensive as to all of AHMSA's assets located in and outside of Mexico, including but not limited to those assets located in the United States. It is a general principle of the Bankruptcy Law that a suspension of payments proceeding is intended to be universal, not territorial. Indeed, Article 13 of the Bankruptcy Law provides:

> The following have jurisdiction to hear the bankruptcy of an individual merchant: the District Judge of the Trial Court of the place where the merchant has his principal place of business, or, if there is none, where he lives.
>
> With regard to companies, jurisdiction shall be proper in the place where the main office is located and if there is none, in the place where it has its principal place of business.
>
> Branches of foreign businesses may be declared bankrupt, without consideration of any jurisdiction which may pertain to foreign judges. This bankruptcy shall affect assets located in the republic and creditors of the operation carried out by the branch.

The third paragraph of Article 13 sets forth an exception to the general rule of universality which is embodied in the second paragraph of Article 13. The third paragraph indicates that a foreign branch of a business may be declared bankrupt

under Mexican law, but that such bankruptcy shall affect only those assets located in Mexico. However, the second paragraph of Article 13 reflects the principle that all assets of AHMSA — whether located in Mexico, the United States or elsewhere — are subject to the jurisdiction of the Mexico Court.

15. This reading of Article 13 is confirmed by Article 1097 of the Code of Commerce (*Codigo de Comercio*), a Federal code supplementary to the Bankruptcy Law, which states as follows:

> The court hearing the bankruptcy and suspension of payments proceeding is competent to hear all actions against the debtor, including those filed against co-defendants acting as joint and several obligors, guarantors, or persons being sued for any reason for monetary obligations, whether those actions are asserted in mercantile or civil proceedings, so that those actions may be joined in the universal and attractive bankruptcy process in which all assets are under the scrutiny of the court, in order for such third parties to litigate their rights in that procedure.
>
> Exceptions to the foregoing are claims derived from mortgages or secured loans, or claims in which the final decision of first instance has already been issued and notified.

16. The Bankruptcy Law further provides that all claims in litigation or otherwise against the debtor must be brought

to the Mexico Court. *See* B.L. Arts. 126, 220, 221, 408-410, 429; Code of Commerce Art. 1097. Because AHMSA has been declared to be in suspension of payments, the enforceability of the promissory notes at issue is governed by the Bankruptcy Law of Mexico and any claim to recover on the notes must be brought in AHMSA's pending suspension of payments proceeding. Moreover, effective upon the entry of the SOP Judgment, interest ceases to accrue on the notes and recovery of any default rate of interest or of costs and expenses by Plaintiff are not allowed. Further, under Mexican law, all obligations of AHMSA are converted into pesos as of the entry of the SOP Judgment in order to assure equality of treatment of creditors.

17. Foreign judgments, such as a stay imposed by a bankruptcy court or other court in the United States, would be enforced in Mexico. Article 14 of the Bankruptcy Law provides that foreign bankruptcies are honored in Mexico so long as it can be shown that (i) the formalities for filing under the foreign bankruptcy law were complied with, and (ii) the foreign bankruptcy would satisfy the provisions of the Mexican Bankruptcy Law with respect to the declaration of bankruptcy. In addition, other provisions of Mexican law confirm that an order of this Court or another court in the United States imposing a stay would be enforced in Mexico: (a) Articles 604-608 of the *Codigo de Procedimientos Civiles para el Distrito Federal* (Code of Civil Procedure for the Federal District of Mexico), which is applicable in AHMSA's suspension of payments proceeding; (b) Articles 569-577 of the *Codigo Federal de Procedimientos Civiles* (Federal Code of Civil Procedure), which is applicable in AHMSA's suspension of payments proceeding pursuant to Article 6 of

the Transitory Provisions (addendum) of the Bankruptcy Law; and (c) Articles 1347-A of the Code of Commerce. (Such statutes together with an English translation thereof are annexed hereto as Group Exhibit C.)

(a) Article 605 of the Code of Civil Procedure for the Federal District of Mexico states:

> Decisions and other foreign resolutions shall be effective and shall be recognized in the Republic in all matters which are not contrary to the internal public order under the terms of this Code, of the Federal Code of Civil Procedures and other applicable laws, except that which is stipulated by treaties and conventions to which Mexico is a party.
>
> In the case of jurisdictional decisions or resolutions which are only going to be used as evidence, it shall be sufficient that they meet the requirements necessary to be deemed authentic certified documents.
>
> The effects which foreign decisions or arbitration rulings have in the Federal District shall be governed by the Civil Code, by this Code and the Federal Code of Civil Procedures and other applicable laws.

(b) Article 569 of the Federal Code of Civil Procedure provides:

Appendix

Decisions and private arbitration decisions and other foreign jurisdictional resolutions shall be effective and shall be recognized in the Republic in all matters which are not contrary to the internal public order under the terms of this Code, of the Federal Code of Civil Procedures and other applicable laws, except that which is stipulated by treaties and conventions to which Mexico is a party.

In the case of jurisdictional decisions or resolutions which are only going to be used as evidence before Mexican courts, it shall be sufficient that they meet the requirements necessary to be deemed authentic documents.

The effects which foreign decisions or arbitration rulings have in the national territory shall be governed by the Civil Code, by this Code and other applicable laws.

(c) Article 1347-A of the Code of Commerce provides:

Decisions, arbitration rulings and resolutions issued abroad may be enforceable if they meet the following conditions:

I. That the formalities stipulated in the treaties and conventions to which Mexico is a party have been satisfied with respect to letters rogatory coming from abroad; in the case of the

enforcement of arbitration decisions, no letter rogatory shall be required;

II. That they have not been issued as a result of the exercise of an action in rem;

III. That the deciding judge or court had jurisdiction to hear and judge the matter pursuant to the rules recognized in the international sphere which are compatible with those adopted by this Code;

IV. That the defendant has been notified or summoned personally in order to ensure him the guarantee of a hearing and the exercise of his defenses;

V. That they have the character of a res judicata in the country where they were issued, or that no ordinary appeal exists against them;

VI. That the action which gave rise to them is not a matter which is pending between the same parties before Mexican courts and in which a Mexican court has issued preliminary measures or at least when the letter rogatory for summons has been processed and delivered to the Department of Foreign Affairs or to the Government authorities where the summons is to be performed. The same rule shall apply when a final decision is issued;

VII. That the obligation whose performance is being enforced is not contrary to the public order in Mexico; and

VIII. That they meet the requirements to be considered authentic.

Notwithstanding the performance of the preceding conditions, the court may deny execution if it is proved that foreign decisions, jurisdictional resolutions or arbitration rulings are not enforced in analogous cases.

Based on the foregoing, I believe that if the situation were reversed — *i.e.*, if the Mexico Court were asked to uphold a stay imposed by a bankruptcy court or other court in the United States — the Mexico Court would resolve that question in favor of giving effect to the stay.

18. Pursuant to Article 128 of the Bankruptcy Law, upon the entry of the SOP Judgment (i) all of AHMSA's obligations matured, (ii) interest ceased to accrue on such obligations except in the case of certain secured claims, and (iii) the offset of claims against AHMSA's assets held by a creditor was prohibited except in certain limited circumstances.

III. *BY THIS ACTION, PLAINTIFF WRONGFULLY SEEKS TO CIRCUMVENT THE MEXICAN SUSPENSION OF PAYMENTS PROCEEDING AND IMPROPERLY ELEVATE ITS POSITION VIS-Á-VIS AHMSA'S OTHER COMMON CREDITORS.*

19. By means of the instant action, Plaintiff is wrongfully seeking both to circumvent the suspension of payments proceeding pending for AHMSA in Mexico and also to elevate the priority of its position vis-á-vis other creditors from a common (general unsecured) claim, which would be treated ratably with the vast majority of AHMSA's other creditors under the Bankruptcy Law, to a claim that would be paid *improperly* and *unfairly* ahead of such creditors through the attachment mechanism. By this action, Plaintiff is seeking to obtain improperly an advantage — to the detriment of all creditors — that it would not be entitled to under the Mexican Bankruptcy Law or, for that matter (based upon my reading of the Primoff Declaration), title 11 of the United States Code (the "U.S. Bankruptcy Code").

20. The granting by this Court of the remedy of attachment in favor of Plaintiff — a common creditor in AHMSA's pending suspension of payments proceeding — not only would enable Plaintiff to circumvent such suspension of payments proceeding, but also would be in direct violation of Articles 408-410 of the Bankruptcy Law and, by analogy, Article 411 as well.

IV. *OVERVIEW OF LAW ON SUSPENSION OF PAYMENTS.*

21. In this section, I intend to furnish an overview of those provisions of the Bankruptcy Law that are most relevant to a suspension of payments proceeding. While Title VI of the Bankruptcy Law, which is entitled "Prevention of Bankruptcy," is addressed to suspension of payments proceedings, Article 429 of the Bankruptcy Law (which is included in Title VI) expressly provides: "In all that is not set forth expressly for the suspension of payments and preventive agreement, the rules of bankruptcy and the agreement for the same shall apply as long as they do not contradict the essence and character of the suspension of payments." Also, as indicated above, pursuant to the Sixth Transitory of the Bankruptcy Law, the Code of Commerce and the Federal Code of Civil Procedure also apply in suspension of payments proceedings.

22. Under the Bankruptcy Law, there are two primary types of proceedings: (i) a suspension of payments proceeding, which I understand based on the Primoff Declaration is analogous to a reorganization case under chapter 11 of the U.S. Bankruptcy Code; and (ii) bankruptcy, which is a liquidation and which I understand based on the Primoff Declaration is similar to a case under chapter 7 of the U.S. Bankruptcy Code. The principal purpose of a suspension of payments proceeding is to prevent the bankruptcy/liquidation of a merchant through the means of a preventive agreement between the merchant and its creditors.

Appendix

Rights and Powers of Debtor and Trustee

23. In a suspension of payments proceeding, the debtor preserves the administration of its assets and continues the ordinary operations of its business under the care of a trustee. *See* B.L. Art. 410. The trustee is an officer of the court and is a fiduciary, *see* B.L. Art. 44, and shall be selected and shall have the rights and obligations set forth in Articles 410 and 416 of the Bankruptcy Law. While the debtor remains in control of its day to day operations, the trustee supervises the debtor with respect to the administration of the debtor's estate. The trustee is required to communicate any irregularities in the business of the debtor to the judge before whom the suspension of payments proceeding is pending. B.L. Art. 416(III).

Preventive Agreement

24. A fundamental element of the suspension of payments proceeding is that the debtor must file a proposed preventive agreement upon the commencement of such proceeding. B.L. Art. 398. Such preventive agreement must maintain the most absolute equality in the treatment of non-privileged creditors such as Plaintiff herein. B.L. Art. 304. The preventive agreement may propose the partial payment of claims on the deferral of payment of claims or both. *See* B.L. Arts. 317-322, 400. In addition, a preventive agreement must include adequate assurance of the debtor's compliance therewith, a timetable for repayment and the mechanisms for the debtor to carry out the terms of the preventive agreement. B.L. Arts. 337, 420. The Preventive Agreement filed by AHMSA, which provides for the

repayment of the recognized principal amount of all claims against AHMSA within three years after acceptance of the Preventive Agreement by the requisite majorities of AHMSA's creditors, satisfies all of these requirements.

25. Pursuant to Articles 304, 305, 313, 316, 317, 321, 322, 401, 403, 418 and 419 of the Bankruptcy Law, all of AHMSA's creditors have the right to accept or reject AHMSA's proposed Preventive Agreement. Votes are tallied based on both the number of creditors present at the meeting called for the purpose of voting on a preventive agreement and also the amount of claims held by such creditors. Minimum voting requirements vary depending upon the terms of a proposed preventive agreement. In general, as the percentage to be paid in respect of claims decreases or the time frame in which such claims are to be satisfied increases, the voting requirements likewise increase. *See* B.L. Arts. 317-322. With respect to AHMSA's Preventive Agreement, the following three conditions must be satisfied in order for the Preventive Agreement to be deemed approved by the requisite majorities: (i) an absolute majority of creditors by claim amount (as distinguished from number of claim holders) must vote in favor of the Preventive Agreement, (ii) an absolute majority of claim holders (creditors), by number and not amount of claims, must attend in person or by proxy the meeting of creditors at which approval of the Preventive Agreement will be considered and (iii) a third of the creditors (by number and not amount of claims) attending the meeting in person or by proxy must vote in favor of the Preventive Agreement. B.L. Arts. 317, 321, 322, 400, 403.

26. In all events, affiliates and insiders may not vote on a preventive agreement and the amount of their claims against

the debtor are deducted for the purposes of computing whether the requisite percentage of total claims have voted in favor of the preventive agreement. B.L. Arts. 325, 326. If the preventive agreement is not accepted, the judge overseeing the suspension of payments proceeding is required to proceed with a declaration of bankruptcy whereupon the assets of the debtor are liquidated. *See* B.L. Art. 419.

27. If the requisite majorities vote in favor of the preventive agreement, it will be submitted to the judge overseeing the suspension of payments proceeding for approval. *See* B.L. Arts. 337, 420. Approval will be granted if the following requirements are met: (a) the debtor was not ineligible to be declared in suspension of payments pursuant to Article 396 of the Bankruptcy Law, (b) the amount offered under the preventive agreement was not less than the possibilities of the debtor and (c) the debtor's performance of the agreement is sufficiently guaranteed in view of the assets of the debtor. B.L. Art. 420. In addition, the judge will examine the preventive agreement to make certain that it maintains the most absolute equality in the treatment of non-privileged creditors such as Plaintiff herein. B.L. Art. 304.

28. The approval of the preventive agreement means that the debtor will not go bankrupt (*i.e.* be liquidated), and produces the same effects as an agreement in bankruptcy. *See* B.L. Art. 423. In this connection, an order approving a preventive agreement binds the debtor and the creditors to the terms of the preventive agreement, and discharges the debtor from liability on its prepetition debts to the extent the agreement provides for payment of such debts. B.L. Arts. 359, 360.

V. *PROCESSING OF CLAIMS; ROLE OF CREDITORS.*

29. As indicated above and as required by Article 16 of the Bankruptcy Law and the SOP Judgement, notice of AHMSA's suspension of payments proceeding has been provided by actual notice sent to creditors whose addresses are known, including Plaintiff herein, and by publication. *See* B.L. Arts. 15-17. The SOP Judgment included a notice to AHMSA's creditors to submit their claims for review within 45 days, beginning the day after the final publication of the SOP Judgment. The last publication of the SOP Judgment was made on October 6, 1999, which initially gave creditors until December 13, 1999 to submit their claims. The Court recently expanded the time for creditors to file claims until March 23, 2000.

30. The procedures with respect to filing and recognition of claims are set forth in Articles 220 through 259 of the Bankruptcy Law. A creditor shall petition the Mexico Court for recognition of its claim, attaching to the petition the documents justifying the claim and copies of the same. B.L. Art. 221. The debtor and all creditors have the right to be heard with respect to the allowance or disallowance of any claim. B.L. Art. 243. All parties have the right to appeal from the Mexico Court's allowance or disallowance of claims to a superior appellate court. *See* B.L. Arts. 249-254.

31. The Bankruptcy Law contains no preference whatsoever for Mexican creditors over non-Mexican creditors. *See* B.L. Art. 261. In fact, Article 223 of the Bankruptcy Law permits the Mexico Court to extend for non-Mexican creditors the period for presenting their claims, up to the day set for the meeting of creditors.

32. Pursuant to Articles 58 and 417 of the Bankruptcy Law, one, three or five representatives of the creditors — called intervenors — will be appointed by the Mexico Court to represent the interests of the creditors in AHMSA's suspension of payments proceeding. The intervenors are recognized by the Mexico Court and elected by the creditors.

33. The intervenors have all measures available to them which are relevant in the interest of the debtor's estate and the rights of the creditors, including (a) appealing decisions of the Mexico Court and opposing those of the trustee which they consider prejudicial to the interests of the creditors; (b) requesting removal of the trustee and exercising actions of responsibility against the Mexico Court; (c) requesting the Mexico Court to order the debtor to appear before them so that they can be informed about the activities of the debtor; (d) designating one or more intervenors to attend all activities regarding the administration of the debtor's estate and/or watch over all operations of the trustee and the debtor; (e) informing the Mexico Court of all acts of extraordinary administration which it should authorize; (f) requesting the Mexico Court to convene an extraordinary meeting of creditors; (g) informing creditors of the progress of the suspension of payments proceeding; and (h) performing other duties which the law expressly designates to them or which it gives, in general, to the creditors. *See* B.L. Art. 67.

VI. *DISTRIBUTION OF ASSETS AND TREATMENT OF COMMON CLAIMS.*

34. The provisions with respect to classification, prioritization and distribution in respect of claims is set forth

in Articles 260 through 273 of the Bankruptcy Law. AHMSA's Preventive Agreement adheres to all of these requirements. The Mexico Court is required in a suspension of payments proceeding to determine the class and priority for each claim. B.L. Art. 260.

35. A distribution to the creditors of one class may not begin until the creditors of each class having a higher priority have been paid. B.L. Art. 269.

36. The following are claims against the debtor's estate that shall be paid with priority over any other claims: (a) expenses for the safekeeping, preservation and administration of the property of the debtor's estate; and (b) claims arising from judicial or non-judicial proceedings for the common benefit, provided such proceedings were duly authorized. B.L. Art. 270.

37. Claims against the estate are classified as follows, in descending order of priority:

(a) creditors who are exclusively privileged;

(b) secured creditors;

(c) creditors with special privilege;

(d) common creditors due to mercantile operations; and

(e) common creditors based on civil law.

B.L. Art. 261.

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38. "Exclusively privileged" creditors include (a) creditors having claims for burial expenses, (b) creditors having claims for medical expenses for an illness that caused the death of the debtor where bankruptcy was declared after death and (c) employees owed salaries for services rendered within 12 months prior to the suspension of payments declaration. B.L. Art. 262.

39. Secured creditors receive payments from the proceeds of their collateral in the order in which their security interests were recorded. Only the remaining equity, if any, in such collateral over and above the secured debt is then available for other creditors. B.L. Art. 263.

40. "Specially privileged" creditors are creditors that in accordance with the Code of Commerce or other statute have a special privilege (*e.g.*, mechanics liens, etc.). *See* B.L. Art. 264. Like mortgage creditors, specially privileged creditors are entitled to be paid first out of the proceeds of the sale of their collateral, but if several claims arise from the same good or asset, a pro rata distribution shall be made without distinction for dates except where the law states to the contrary. *See* B.L. Art. 265.

41. The claims of tax authorities have priority over distributions to all other creditors except for certain secured creditors, alimony creditors and claims for wages for work performed during the last 12 months before the debtor was declared bankrupt. B.L. Arts. 261, 262.

42. Common creditors, like Plaintiff, whose claims are based upon mercantile operations collect pro rata without regard to the date on which their claims arose. B.L. Art. 266.

43. Common creditors whose claims arose from civil law obligations not arising out of the normal course of business (such as claims by professionals for services rendered, certain personal injury claimants, service providers, etc.) also collect without regard to the date on which their claims arose. B.L. Art. 267. These claims rank junior to the claims of common creditors whose claims arose from mercantile operations. *See* B.L. Art. 269.

44. There is no restriction in the Bankruptcy Law on the right of non-Mexican creditors to participate equally with local creditors in a distribution of a debtor's assets. Nor does the Bankruptcy Law discriminate in any way against foreign creditors, who stand on the same footing as local creditors. Indeed, Article 304 of the Bankruptcy Law provides that a preventive agreement shall maintain the most absolute equality in the treatment of non-privileged creditors, unless all creditors in the same class consent.

45. Under Mexican Law, all obligations of the debtor shall be converted into pesos as of the entry of the SOP Judgment in order to assure equality of treatment of creditors. The rate of conversion is fixed as of the date of entry of the SOP Judgment — 9.5 pesos to the dollar in AHMSA's case.

VII. *THE INSTANT ACTION SHOULD BE DISMISSED BASED ON COMITY.*

46. I have been informed that under the relevant case law in the Southern District of New York it is appropriate to defer to, and grant comity to, the Mexico Court with respect to the determination and resolution of Plaintiff's claims as

long as it can be shown that the Mexico Court abides by fundamental standards of procedural fairness. I have been further informed that, with respect to the suspension of payments proceeding pending for AHMSA before the Mexico Court, this Court will examine the following factors as indicia of procedural fairness:

(a) Whether creditors of the same class are treated equally in the distribution of assets.

(b) Whether AHMSA or the Mexican trustee are considered fiduciaries and are held accountable to the Mexico Court.

(c) Whether creditors have the right to submit claims which, if denied, can be adjudicated by the Mexico Court.

(d) Whether AHMSA or the Mexican trustee are required to give notice to the debtor's potential claimants.

(e) Whether the Bankruptcy Law provides for a creditors' meeting.

(f) Whether Mexico's insolvency laws favor its own citizens.

(g) Whether all of AHMSA's assets are marshalled before one body for centralized distribution.

(h) Whether the suspension of payments proceeding includes an automatic stay and provides for the lifting of such stay to facilitate the centralization of claims.

(i) After carefully reviewing the foregoing indicia of procedural fairness, I am of the view that AHMSA's suspension of payments proceeding and the Bankruptcy Law amply satisfy each and every one of these indicia.

47. *Creditors of the same class are treated equally.* As set forth in Section VI above, creditors of the same class are treated equally in the distribution of assets. *See* B.L. Arts. 266, 267, 269, 304.

48. *The debtor and the Mexican trustee are considered fiduciaries and are held accountable to the Mexico Court.* Pursuant to the Bankruptcy Law, the debtor and the Mexican trustee have duties of care and loyalty to their creditors and others and are held accountable to the Mexico Court. *See* B.L. Arts. 44, 410, 411, 416. In this connection, the trustee is required, *inter alia*, to (a) deliver to the Mexico Court, prior to the meeting of creditors, a detailed report about the causes of AHMSA's suspension of payments, the state of AHMSA's books and other information that the trustee deems relevant, B.L. Art. 46; (b) make recommendations to the Mexico Court with respect to AHMSA's estate, B.L. Art. 48(III); and (c) deliver every three months accountings of the trustee's actions and a report on the status of the suspension of payments proceeding. B.L. Art. 50.

49. *Creditors have the right to submit claims for adjudication by the Mexico Court.* As set forth in

paragraphs 9 and 29 through 31 above, creditors of AHMSA have the right to submit claims to the Mexico Court for adjudication. Article 220 of the Bankruptcy Law provides that creditors who want to perfect their claims against AHMSA's estate should request recognition of their claims, which shall be done by the Mexico Court at a creditor's meeting convened especially for such purpose. The determination of the Mexico Court with respect to any claim is subject to appeal. *See* B.L. Art. 249.

50. *Notice is required to be given to AHMSA's potential claimants.* Pursuant to Articles 15(V), 16 and 405 of the Bankruptcy Law, the judgment of declaration of suspension of payments must contain an order requiring that creditors be notified that they have 45 days, beginning the day after the final publication of the judgment, to present their claims for review. As indicated in paragraph 8 above, notice of AHMSA's suspension of payments proceeding has been provided by actual notice sent to creditors whose addresses are known, including Plaintiff herein, and by publication, as required.

51. *The Bankruptcy Law contains provisions for a creditors' meeting.* Articles 15(VI), 26(III) and 73 through 82 of the Bankruptcy Law provide for and prescribe the conduct of creditors' meetings. Creditors' meetings are either ordinary or extraordinary. B.L. Art. 73. An ordinary meeting is one that is required to take place pursuant to the Bankruptcy Law, including meetings for (a) the recognition of claims, B.L. Arts. 220, 235, 240, (b) the appointment of intervenors, B.L. Arts. 60, 417, (c) approval of the preventive agreement, B.L. Arts. 418, 305, 311, 314, 315, 297, 331,

and (d) approval of the accounts of the trustee. B.L. Art. 416(IV). Extraordinary meetings are those called in connection with other subjects. B.L. Arts. 61, 67(VI). Creditors' meetings are convened and presided over by the Mexico Court. B.L. Arts. 74, 76, 82. Notice of the meetings are published. B.L. Art. 76. Resolutions are generally valid if they were set forth on the agenda for the meeting and approved by the majority of creditors attending the meeting in person or by proxy. B.L. Arts. 75, 77-79.

52. *Mexico's insolvency laws do not favor citizens of Mexico.* As indicated in paragraphs 31 and 44 above, the Bankruptcy Law contains no preference whatsoever for Mexican creditors over non-Mexican creditors.

53. *All assets are consolidated before one body for centralized distribution.* As set forth at length in paragraphs 14 through 17 above, Articles 26(III) and (XI) and 429 of the Bankruptcy Law provide that the suspension of payments proceeding is intended to be comprehensive as to all of AHMSA's assets located in and outside of Mexico, including but not limited to those assets located in the United States. As a general principle, the suspension of payments proceeding is intended to be universal, not territorial. The Bankruptcy Law further provides that all claims in litigation or otherwise against the debtor must be brought to the Mexico Court. *See* B.L. Arts. 126, 220, 408-410, 429; Code of Commerce Art. 1097. The intent of these provisions is to accumulate all of AHMSA's assets before the Mexico Court for centralized distribution.

54. *The Bankruptcy Law contains an automatic stay.* As described in detail in paragraphs 12 through 16 and 18

above, upon entry of the SOP Judgment, Articles 408 through 410 of the Bankruptcy Law imposed a statutory stay of claims against AHMSA. Article 411 of the Bankruptcy Law states that the granting of security interests by the debtor shall be ineffective as against creditors during the pendency of a suspension of payments proceeding. A moratorium on legal actions such as the instant action commenced by Plaintiff became effective as of the entry of the SOP Judgment. B.L. Art. 409. The complaint filed herein commencing this action as well as all subsequent steps taken by the Plaintiff to attach AHMSA's assets thus constitute a violation of the stay imposed by the Bankruptcy Law.

VIII. *DISMISSAL OF THE INSTANT ACTION WILL BEST ASSURE THE ECONOMICAL AND EXPEDITIOUS ADMINISTRATION OF AHMSA'S ESTATE.*

55. I have been informed that section 304(c) of the U.S. Bankruptcy Code provides authority for dismissal of the instant action, and that in determining whether to grant such relief the Court shall be guided by what will best assure an economical and expeditious administration of AHMSA's estate, consistent with —

(a) just treatment of all holders of claims against the estate;

(b) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in AHMSA's suspension of payments proceeding;

(c) prevention of preferential or fraudulent dispositions of property of AHMSA's estate;

(d) distribution of proceeds of AHMSA's estate substantially in accordance with the order prescribed by the U.S. Bankruptcy Code; and

(e) comity.

I have been asked to comment on each of these factors.

56. *The suspension of payments proceeding affords just treatment to all of AHMSA's creditors.* As discussed at length above, AHMSA's creditors will have been afforded sufficient opportunity to submit their claims for determination. A creditor is permitted to appeal an adverse determination. Pursuant to the Bankruptcy Law, creditors have the right to call and attend meetings of creditors. Creditors will have the right to accept or reject the proposed Preventive Agreement. Creditors also have the right to seek the appointment of an intervention.

57. With respect to distributions to creditors, as detailed more particularly above, the Mexico Court is required in AHMSA's suspension of payments proceeding to determine the class and priority for each claim. A distribution to the creditors of one class may not begin until the creditors of each class having a higher priority have been paid. Certain claims described above shall be paid with priority over any other claims. The most absolute equality in the treatment of non-privileged creditors is strictly required unless all creditors in the same class consent. Creditors who are

outvoted or believe that they have been placed in the wrong class may obtain a hearing on such issue before the Mexico Court and take an appeal from an adverse determination.

58. *Claim holders in the United States will not suffer prejudice in the processing of claims in AHMSA's suspension of payments proceeding.* There are no provisions in the Bankruptcy Law which create any special prejudice or inconvenience for the processing of claims of United States creditors, including the Plaintiff herein, in AHMSA's suspension of payments proceeding. In fact, as indicated above, Article 223 of the Bankruptcy Law permits the Mexico Court to extend for non-Mexican creditors the period for presenting their claims, up to the day set for the meeting of creditors.

59. *The Bankruptcy Law prevents preferential or fraudulent dispositions of property of AHMSA's estate.* The Mexico Court has the power to avoid preferential or fraudulent dispositions of a debtor's property (or assets) made to the detriment or prejudice of creditors. *See* B.L. Arts. 93, 96, 168-170, 172, 173, 297. Transactions that are intentionally fraudulent or transactions that are made for less than fair consideration may be set aside. Setting aside the transaction would enable the debtor to recover the property or assets transferred.

60. *The proceeds of AHMSA's estate will be distributed substantially in accordance with the order described by the U.S. Bankruptcy Code.* Although I am not in a position to testify to the meaning of the U.S. Bankruptcy Code, I believe that the rules and principles governing the distribution of

the assets of AHMSA's estate under the Mexican Bankruptcy Law and the case law thereunder are substantially similar to the rules and principles which would govern distribution under the U.S. Bankruptcy Code. (*See* the Primoff Declaration in this regard.) It is readily apparent that both the Mexican Bankruptcy Law and the U.S. Bankruptcy Code provide for equal and ratable distributions to be made to creditors having the same rank and priority. In this connection, both statutory schemes classify claims with distributions to creditors being made based on the priority of the class in which a creditor's claims is placed. Secured creditors naturally have a higher priority than common (unsecured) creditors. Claims for expenses relating to the administration of the debtor's estate also have priority. Distributions to common (unsecured) creditors are made on a pro rata basis.

61. *Principles of comity favor granting dismissal.* For all of the reasons discussed at length above in Section VII, principles of comity favor dismissal of the instant action. As I explained in detail in paragraphs 14 through 17 above, a judgment of this Court may be enforced in Mexico. And, if the situation were reversed — *i.e.* if the Mexico Court were asked to uphold a stay imposed by a bankruptcy court or other court in the United States — the Mexico Court would resolve that question in favor of giving effect to the stay.

62. In view of the foregoing, I believe that dismissal of the instant action will promote the economical and expeditious administration of AHMSA's estate.

IX. *CONCLUSION.*

63. The Plaintiff's action, and the remedy it seeks of various "self-help" measures such as attachment, constitutes a serious threat to AHMSA's other creditors and, therefore, to the success of AHMSA's suspension of payments proceeding. Such measures are strictly forbidden by the Mexican Bankruptcy Law; unless the instant action is dismissed by this Court, this action will jeopardize the orderly administration of AHMSA's estate. As indicated in paragraph 22 above, Plaintiff is wrongfully seeking to circumvent the Mexican suspension of payments proceeding and improperly elevate its position vis-á-vis AHMSA's other common (unsecured) creditors. Plaintiff herein seeks to enhance its position at the expense of the vast majority of AHMSA's other creditors through the attachment mechanism and to obtain a benefit that it simply is not entitled to as a matter of Mexican law or (I believe, based on the Primoff Declaration), for that matter, United States law. Furthermore, unless dismissed, the instant action might result in the dismemberment of AHMSA's assets and foster inequitable treatment of creditors with similar claims, whether such creditors are located in the United States, Mexico or elsewhere.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this [22nd]th day of December, 1999.

/s/ Jaime Garcia Priani
Jaime Garcia Priani

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Appendix

EXHIBIT A TO PRIANI DECLARATION

APPENDIX 8

LAW OF BANKRUPTCY AND SUSPENSION OF PAYMENTS

(Part Five of the Code of Commerce)

Diario Oficial, 20 April, 1993

TITLE I

The Concept and Declaration of Bankruptcy

Chapter I

Requirements for the Declaration of Bankruptcy

ARTICLE 1. A merchant who ceases to pay his obligations may be declared to be in a state of bankruptcy.

ARTICLE 2. It shall be presumed, except upon proof to the contrary, that a merchant ceased making his payments in the following cases and any others of an analogous nature:

I. General non-compliance with the payment of his current and outstanding obligations;

II. The non-existence or insufficiency of assets upon which to levy execution of a lien due to non-compliance with a debt or upon executing a judgment;

III. The concealment or absence of the merchant without leaving someone at his business who could legally comply with his obligations;

IV. Under the same circumstances as the preceding case, the closing of the offices of his business;

V. An assignment for the benefit of creditors;

VI. Resorting to ruinous, fraudulent or fictitious means to discharge or avoid discharging his obligations;

VII. Petitioning for a declaration of bankruptcy;

VIII. Petitioning for a suspension of payments, which is denied, or, if it is granted, an agreement of creditors is not reached;

IX. The non-compliance with obligations contracted for in an agreement reached for a suspension of payments.

The presumptions alluded to in this article shall be overcome by proof that the merchant can pay his current and outstanding obligations with his available funds.

ARTICLE 3. Within the two-year period following the death or the retirement of a merchant, he may be declared to be in a state of bankruptcy when there is proof that he had ceased paying his obligations before his death or retirement, or in the year following either.

Appendix

The estate of a merchant may be declared to be in bankruptcy when the business of which the merchant was the owner continues.

ARTICLE 4. The bankruptcy of a partnership also causes the general partners to be considered bankrupt for all purposes.

The respective liquidations shall be kept separate.

The bankruptcy of one or more partners does not by itself cause the bankruptcy of the partnership.

Mercantile partnerships in liquidation and joint ventures may be declared to be in a state of bankruptcy.

The bankruptcy of a joint venture shall cause the bankruptcy of the general partners and of those against which there is proof that, without any objective reason therefor, they were designated as limited partners. Other than the exceptions expressly indicated by this law, all provisions concerning the bankruptcy of partnerships shall apply to joint ventures.

Appendix

Chapter II

The Declaration of Bankruptcy

FIRST SECTION

Initiation of the Declaration

ARTICLE 5. A declaration of bankruptcy may be made by official act in the cases for which the law so provides, or by written petition by the merchant, by one or more creditors or by the Public Ministry.

ARTICLE 6. The merchant who intends to declare a state of bankruptcy should present before the judge having jurisdiction a petition signed by the merchant by his legal representative or by his special attorney in fact, in which he states the reasons for his situation and which is accompanied by:

a) The accounting books he was obligated to keep and those which he voluntarily had adopted;

b) The balance sheet for his business;

c) A list which contains the names and addresses of his creditors and debtors, the nature and amount of his pending debts and obligations, the status of the losses and gains of his business in the last five years;

d) A description of the value of all his movable and non-movable property, securities-stocks, merchandise and rights of any other kinds;

e) A complete valuation of his business.

When the number of creditors exceeds one thousand or when it is impossible to determine the number of claims, it shall be sufficient to list, with reference to the final balance sheet of the situation, the approximate number of them, the names and addresses of the known creditors and the total amount of their claims.

ARTICLE 7. If the merchant is a company, the petition should be signed by the persons who are empowered to sign the firm name; in the cases of companies in liquidation, by the liquidators, and in those cases of an estate, by the executors.

ARTICLE 8. The petition of a company for a declaration of bankruptcy should be accompanied by a copy of the articles of incorporation or partnership agreement and by a copy of its registration in the Public Commercial Register, if they exist.

ARTICLE 9. The creditors and the Public Ministry, when requesting a declaration of bankruptcy, shall demonstrate that the debtor falls within one of the categories referred to in the previous chapter.

ARTICLE 10. If, during the course of a trial, the judge becomes aware of a suspension of payments, he shall proceed to make a declaration of bankruptcy, if he has jurisdiction to do so, or he shall report it immediately to a judge with such jurisdiction.

If he only has serious and well-founded doubts about the situation of a suspension of payments, he shall notify

the creditors and the Public Ministry, so that they can request, in the appropriate case, a declaration of bankruptcy within a period of one month following the notification. In the meantime, the judge shall adopt the measures authorized in the second paragraph of the following article, which shall cease, if in the period of one month the declaration of bankruptcy is not sought.

ARTICLE 11. In all cases, the judge, in order to make the declaration of bankruptcy, shall give to the debtor and the Public Ministry within five days, notice of a hearing in which evidence shall be brought forth and the corresponding decision shall be rendered.

General partners shall be notified at the partnership address.

The judge, according to his authority, shall adopt provisional measures in the meantime which are necessary for the protection of the interests of the creditors.

ARTICLE 12. Neither the debtor nor the creditors who have petitioned for a declaration of bankruptcy may withdraw their petition, even when all creditors agree.

SECOND SECTION

Jurisdiction of Bankruptcy

ARTICLE 13. The following have jurisdiction to hear the bankruptcy of an individual merchant: the District Judge or the Judge of the Trial Court of the place where the

merchant has his principal place of business, or, if there is none, where he lives.

With regard to companies, jurisdiction shall be proper in the place where the main office is located and if there is none, in the place where it has its principal place of business.

Branches of foreign businesses may be declared bankrupt, without consideration of any jurisdiction which may pertain to foreign judges. This bankruptcy shall affect assets located in the republic and creditors of the operations carried out by the branch.

ARTICLE 14. Except for that set forth in the international conventions and agreements, declarations of bankruptcy abroad shall not be honored in the republic, except after verification of the formal requirements of the same and assuring that they have acknowledged the provisions of this law in the declaration of bankruptcy.

The effects of the declaration of bankruptcy shall be subject to this law.

Chapter III

The Judgment Declaring Bankruptcy and its Publication, Opposition and Revocation

ARTICLE 15. The judgment in which a declaration of bankruptcy is adjudicated shall contain:

I. The name of the trustee and of the auditor;

II. The order to the bankrupt to present his balance sheet and accounting books within twenty-four hours, if they were not presented with the petition;

III. The order to secure and give possession to the trustee of all assets and claims, the administration of which the debtor is now deprived due to the judgment, as well as the order to the post office and telegraph to deliver all correspondence of the bankrupt to the trustee;

IV. The prohibition against making payments and delivering assets or goods of any kind to the debtor, under penalty of receiving payment secondary to the other creditors in the case;

V. The notice to creditors to present their claims for review within a period of forty-five days, beginning the day after the final publication of the judgment;

VI. The order convening a meeting of creditors to recognize, correct and classify all claims, which shall be done within a period of forty-five days, beginning fifteen days after the day on which the period set forth in the preceding section ends, at the place and time fixed by the judge, according to the circumstances in the case.

For good cause, the meeting may be held within a maximum period of ninety days;

VII. The order to register the judgment in the Public Register where the registration of the merchant is found, and, in its absence, in the Public Register of the place of residence

of the judge having jurisdiction of the case and in the Public Commercial Registers and Public Property Registers in the places where assests [sic] or establishments of the debtor are located;

VIII. The order issuing to the trustee, the bankrupt, the intervenors or to any creditor who so requests, certified copies of the judgment;

IX. The date on which the purposes of the bankruptcy take effect.

Upon the declaration of bankruptcy of a partnership, the judgment shall also indicate the names, surnames and addresses of the partners referred to in Article 4.

Along with the date of the judgment, the hour on which it was rendered shall be set forth.

ARTICLE 16. The judgment which declares the bankruptcy shall be reported to the debtor, the Public Ministry, the intervenors, the secured creditors, the privileged creditors and the other creditors whose addresses are known, either personally or by certified mail, return receipt requested, or by official telegram before fifteen days pass from the day on which the judgment was rendered.

During the same period the Public Registers, in which the judgment shall be registered, shall be notified.

Within the same period an excerpt of the judgment shall be published on three consecutive occasions in the Diario

Oficial of the Federation and in two newspapers of major circulation in the place where the declaration of bankruptcy was made, and, if it is necessary in the opinion of the judge, in the locations where important establishments of the business of the bankrupt were situated.

ARTICLE 17. The official in charge of giving the notices shall insure that the notices, communications and publications established in the previous article are made without excuse or delay in the form and during the periods set forth.

The same obligation shall rest on the trustee.

ARTICLE 18. Any violation of that set forth in the previous article shall be punishable, when dealing with the official in charge of giving the notices, by a fine up to two hundred pesos and, in the case of a reoccurrence of the violation, the suspension of employment for a period of one month. When dealing with the trustee, it shall be punishable by his removal and the loss of any fees that he may have earned.

The respective decision shall be appealable without execution thereof being suspended.

One month after the declaration of bankruptcy, without everything ordered in Article 16 having been complied with, the parties, including the creditors not yet recognized, shall be able to appear before the court of appeals, which, in a period or seventy-two hours, shall issue the relevant instructions omitted by the judge and shall submit the facts to the Public Ministry for the purposes of the duties of such Ministry.

ARTICLE 19. Against a judgment which denies the declaration of bankruptcy, exists the recourse of appeal for all purposes. The appeal shall be brought without suspension of execution of the judgment being carried out against the person declaring bankruptcy.

ARTICLE 20. Once the evidence has been received, the court of appeals, within two days, shall decide upon the admissibility of the appeal according to that set forth in the Code of Civil Procedure.

Also applicable shall be that set forth in the Code on damages, and from these codes notice shall be given to the other parties for a period common to them all. The periods for declaring and answering damages shall be three days.

In the petitions for damages and the answers, the parties should offer proof, specifying the points on which they should argue, which shall never deviate from the debated issue.

Within the third day the court shall decide on the admission of the proof, opening up an evidentiary period, which shall not exceed fifteen days.

From the act of admission until the periods for arguing the evidence have passed, a confession may be made. In case of an implied confession the judge shall examine carefully the presumption which is produced against the documents and records of the proceedings.

ARTICLE 21. Once the damages are answered, if not through the production of evidence, or once it has been

produced, there shall be a period of three days for the appellant to argue, and another three days for the other parties to argue. The passage of these periods shall suffice to place the business on notice that the court is ready to issue its judgment.

The judgment which confirms or revokes the declaration of bankruptcy shall be issued within the ten-day period following the notice that the court is ready to announce judgment.

ARTICLE 22. The previous provisions shall apply as long as this law, without setting forth anything to the contrary, allows for the appeal of a judicial decision.

ARTICLE 23. The judgment which denies a declaration of bankruptcy shall be registered in the Public Registries in which the declaration was registered and shall be communicated, in order to cancel the registrations, to the commercial and property registers in which the judgment of the declaration of bankruptcy had been recorded.

The judgment denying the bankruptcy shall be communicated and published just as the declaration of bankruptcy is.

ARTICLE 24. Once the judgment declaring bankruptcy is revoked, all things shall return to the state in which they were before the declaration was made, having respect, however, for the administrative acts legally carried out by the organs of bankruptcy and the rights acquired during the same period by good faith third parties.

ARTICLE 25. If a revocation of the judgment of declaration of bankruptcy is obtained, an action may be brought against those that petitioned for it or against the judge who officially declared it for compensation for the damages suffered, if the former proceeded with malice, known injustice or gross negligence.

TITLE II

The Organs of Bankruptcy

Chapter I

The Bankruptcy Judge

ARTICLE 26. The following shall be powers of the judge:

I. To authorize the acts of seizure of all assets and books, documents and papers of the bankrupt concerning his business, and to intervene personally in such acts, if he deems it necessary;

II. To examine the aforementioned assets, books, documents and papers of the bankrupt;

III. To order the measures necessary for the security and preservation of the assets of the estate;

IV. To convene the meetings of the creditors prescribed by law and those which he deems necessary and to preside over them;

V. To authorize the naming of the personnel or professionals necessary in the interest of the bankruptcy, to watch over their actions and to remove them for just cause;

VI. To resolve the claims that are presented against the acts or omissions of the trustee;

VII. To authorize the trustee to:

a) Initiate lawsuits when the latter so requests and intervene in all phases of their activity;

b) Settle or dismiss certain actions and, in general, carry out all acts which exceed those which are purely acts of ordinary preservation and administration of the estate;

VIII. To inspect the activities of the trustee, to assure his compliance with the actions or the performance of useful actions for the estate and to guard the good management and administration of the assets of the same;

IX. To remove the trustee by means of an official decision or upon the petition by an interested party;

X. To examine and verify the claims and to watch over the preparation of the balance sheet to be presented at the creditor's meeting.

XI. In general, to do all things necessary for the management, care and administration of the bankruptcy and its operations.

ARTICLE 27. The decisions made by the judge, with the exceptions provided by law, do not need to be communicated personally to the parties, unless the judge deems it necessary.

Chapter II

The Trustee

ARTICLE 28. The trustee shall be picked from one of the institutions or persons who are indicated as follows, according to the order of preference:

I. Credit institutions legally authorized to be trustees;

II. Chambers of Commerce and Industry;

III. Commercial companies and individuals duly registered in the Commercial register.

ARTICLE 29. Credit institutions shall carry out trusteeships in bankruptcies in the manner set forth for fiduciary functions.

Chambers of Commerce and Industry shall carry out trusteeships through one of the members of their board of directors, or through the delegation of the duty, in each case, to one of their members or attorneys, to whom they shall give ample special powers and whom they may substitute at their discretion.

Chambers of Commerce and Industry shall be responsible for the actions of their agents, without this fact removing the responsibility which the agents incur personally.

Mercantile companies shall carry out their duties through one of their partners or directors who is authorized to use the firm signature, or through that person to whom they have granted ample special powers; however, they shall assume responsibility for the actions of their representative.

ARTICLE 30. The following may not serve as trustees nor act as the agents of the entities mentioned in Article 28:

I. Relatives within the fourth level of consanguinity or second level of affinity to the bankrupt;

II. Those who are relatives within said levels to the members of the Board of Directors or managers of corporations or limited liability companies in bankruptcy, or to persons authorized to use the firm signature when dealing with partnerships or limited partnerships;

III. Relatives within the levels referred to above of the judge who is presiding over the bankruptcy;

IV. Intimate friends or known enemies, the attorney in fact, the partners or persons who have interests in common with the bankrupt or with the members of the companies mentioned in Section II.

The incompatibility referred to in Section IV shall be liberally interpreted by the judge.

ARTICLE 31. The following may not be included in the lists of trustees:

I. Persons who do not have full exercise of their civil and political rights;

II. Those who, having been declared to be in bankruptcy, were not rehabilitated;

III. Persons who do not have an unimpeachably good reputation.

ARTICLE 32. Whenever it is possible, the choice of a trustee shall fall on an institution or merchant which resides in the place where jurisdiction over the bankruptcy lies.

This circumstance shall allow a change, if the judge deems it necessary, in the order of preference established in Article 28.

When the choice of trustee falls on the commercial entities or merchants referred to in Section III of Article 28, preference shall be given to those which are dedicated to the same activities as the bankrupt, or those which are the most similar.

ARTICLE 33. In each trial court there shall be lists of institutions and persons who may be designated as trustees.

These lists shall be made in the manner and under the conditions listed as follows:

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I. The National Banking Commission shall insure that every two years a list of the credit institutions which have the necessary attributes to carry out the duties of trustee, along with information about the branches and establishments which they have in the nation, is made, printed and delivered to all trial courts in the nation.

Any exclusions from this list shall be communicated immediately to the corresponding courts;

II. The National Ministry of the Economy shall proceed in the same manner to establish a list of the Chambers of Commerce and Industry;

III. The civil trial judges and district judges shall request, every two years, from the Chambers of Commerce and Industry whose addresses are located within their jurisdiction, a list of the mercantile companies and merchants who are their members.

Said Chambers of Commerce and Industry shall be undeniably obligated to supply said lists in the maximum period of fifteen days, as well as to communicate twice a year the additions and deletions to such list.

When there are several judges of equal position in the same jurisdictional area, the request shall be made by the least number, who shall be obligated to send copies of the lists obtained to the others.

ARTICLE 34. For the reasons set forth in the judgment of declaration of bankruptcy, judges may name as trustees

institutions or persons who are not included in the above-mentioned lists.

Interested parties may appeal this decision and the Superior Court shall decide if the reasons indicated by the judge are justified.

ARTICLE 35. For the choice of trustee, the judges shall designate one of the institutions included in the list of credit institutions.

If none of these accept or are not suitable, he shall designate one of the Chambers of Commerce and Industry on the list.

If none of these is possible, he shall name, according to alphabetical order, one of the commercial companies or individuals in the respective list, taking into account what is set forth in the last paragraph of Article 32.

ARTICLE 36. An individual merchant or company shall not be named for a new trusteeship if it already has served as trustee, unless none of those who can serve in the corresponding category accept.

ARTICLE 37. In order to increase the brevity of the procedure for naming the trustee, the judge can designate separately and simultaneously as the trustee of a bankruptcy several institutions or persons, indicating to all of them that they are proposed trustees and the alphabetical order of preference in which their acceptances shall be considered, according to that set forth in the following articles.

ARTICLE 38. Within the twenty-four hour period following the communication of his appointment, the trustee designated shall inform the judge whether he shall accept the duties.

ARTICLE 39. Acceptance is voluntary, but once made it may not be relinquished except by a declaration of grave supervening reasons, which shall be freely appraised by the judge.

The only recourse against the decision of the judge is responsibility.

ARTICLE 40. The denial of acceptance of the initial designation obligates the judge to name a new trustee.

If circumstances justifying the denial are alleged and the designate requests judgment on them, the judge shall consider them and if he does not admit them he can confirm the designate in his duties. All this must be done within two days.

ARTICLE 41. If, once the duties of trusteeship are accepted, the appointed trustee fails to discharge his duties, he shall be responsible for all damages caused by such failure to the bankruptcy, and he shall incur a fine of fifty to five hundred pesos.

ARTICLE 42. Within the twenty-four hours following the communication of resignation, or of the existence of a legal reason of incompatibility or incapacity, the judge shall pass judgment on the alleged reasons and, where appropriate, shall name a new trustee.

ARTICLE 43. The judge shall order that the trustee, within the fifteen days following his appointment, furnish a substantial bond, in the judgment and under the responsibility of the judge.

Credit institutions shall be regulated in these matters by that set forth in their special laws. The expenses and premiums paid for the creation and maintenance of the bond shall be charged to the estate of the bankruptcy.

ARTICLE 44. The trustee shall be deemed an assistant in the administration of justice.

ARTICLE 45. The trustee may not delegate his duties; but for the purpose of carrying out the functions corresponding to him in the order for the administration and liquidation of the bankruptcy, without the consent of the court, he may use agents and representatives, whose designation the judge may acknowledge. The judge, by official act or upon the request of the trustee, may order that such agents and representatives carry out the demands for their compliance with the necessary actions or operations.

ARTICLE 46. The rights and duties necessary for the good preservation and ordinary administration of the assets of the estate shall belong to the trustee, and among them are the following:

I. Taking possession of the business and other assets of the bankrupt;

II. Making an inventory of the business and other assets of the bankrupt;

III. Making the balance sheet, if the bankrupt has not presented it, and if he has, correcting it if necessary or looking it over carefully;

IV. Receiving and examining the books, papers and documents of the business and noting in the first pages of each that he has reviewed them;

V. Depositing within seventy-two hours the money collected in the company or from the sale of other seized assets for credit, which the judge has indicated.

When the law does not set a period for compliance with the obligations imposed upon the trustee, the judge shall set a period within which they should be carried out.

Any delay in compliance with this, besides obligating the trustee to pay the interest the estate should have received, shall be cause for removal.

VI. Delivering to the judge, before the meeting of creditors referred to in Section VI of Article 15 is held, a detailed report, based upon the memory of the bankrupt if he is present, about the causes of the bankruptcy, particular circumstances about the functioning of the business, the state of the books, the period to which the bankruptcy dates back, personal and family expenses of the bankrupt, as well as other information which he deems relevant;

VII. Establishing a provisional list of privileged creditors, as well as of ordinary creditors who were presented;

VIII. Making the proposals of personnel necessary in the interest of the bankruptcy;

IX. Taking care of the accounting of the bankruptcy, with the requirements established in the Commercial Code.

ARTICLE 47. The trustee, if he is an attorney, may be the legal employer in the bankruptcy.

ARTICLE 48. The following also pertain to the trustee:

I. Presenting to the creditor's meeting proposals for agreement, after receiving judicial approval;

II. Exercising and following all the rights and actions which pertain to the debtor, with regard to his assets, and to the group of creditors against the debtor, against third parties and against certain creditors of theirs;

III. Proposing to the judge the continuation of the business of the bankrupt, its sale, or the sale of some of its parts, or of other assets of the bankruptcy, under the circumstances and with the effects which the law determines, as well as all other extraordinary measures advised for the good of the estate of the bankruptcy.

ARTICLE 49. Against any act or omission of the trustee, the bankrupt, the intervenors, any creditor and the agent of the Public Ministry may make a claim before the judge, who shall resolve it within three days. Against this decision, there is an appeal, without execution of the decision being suspended.

ARTICLE 50. The trustee, every three months, shall deliver accountings of his actions and a report on the state of the bankruptcy. The report and accounting shall be shown to the bankrupt and the intervenors for three days, and, in a hearing held within the three following days, the judge shall issue a decision, approving or disapproving the accountings.

Whenever the judge so decides, either by official act or upon the petition of the intervenors, the bankrupt or the trustee, an accounting shall be rendered and a report on the state of the bankruptcy shall be presented within a period of three days from the day on which the judge so decided.

The decision made which called for the accountings is appealable without execution thereof being suspended.

The books and documents of the bankrupt shall always remain with the business if it has continued with its activities.

ARTICLE 51. The intervenors have the duty to communicate to the creditors the information relative to the accountings and state of the bankruptcy, so that they may use their rights relative to the decisions adopted.

ARTICLE 52. The appointment of the trustee may be opposed by the bankrupt or by any creditor within the three days following its publication.

The opposition, which shall be based upon legal reasoning, shall be carried out as a trial.

ARTICLE 53. The trustee shall be removed immediately if he fails to deliver the extraordinary or trimestrial accounting, or to guarantee his conduct according to the terms of the law.

He shall be removed on the request of a party, after a trial, for improperly carrying out his duties or for doing one of the improper actions referred to in this law.

In these same circumstances, the judge may remove him by official act.

ARTICLE 54. The opposition to the appointment of the trustee made by the bankrupt or by the creditors shall not suspend the continuation of the bankruptcy, nor shall it impede the trustee in the exercise of his functions.

The judge may, nevertheless, order the contrary, taking into account that set forth in Section III of Article 26.

ARTICLE 55. The trustee who ceases to carry out his duties shall not be free from responsibilities, nor shall he have the right to receive his fees until a substitute has taken possession and, upon receiving and reviewing his report, the judge so decides.

ARTICLE 56. The trustee shall be responsible to the estate for the damages caused in carrying out his functions by not proceeding as a diligent merchant in the manner of a proper business.

ARTICLE 57. The trustee shall receive as his sole fees:

I. Eight percent of the amount of the sales made for the good preservation and ordinary administration of the assets of the bankruptcy;

II. When the sales are made to liquidate the assets of the estate:

a) Eight percent of the product of the sale of the same, if this does not exceed twenty-five thousand pesos;

b) Four percent of the excess up to two hundred thousand pesos;

c) Two percent of any excess amount;

III. When the business continues with its activities until the liquidation of its existing activities, the fees shall accrue according to the scale of the previous clause with an increase of two percent;

IV. If the enterprise continues temporarily and then proceeds to liquidation in the aforementioned ways, that set forth in the previous clauses shall be taken into account;

V. If the business is sold as a whole, the percentage shall be the same as that established in Section II on the amount of the same, increased by two percent;

VI. If the bankruptcy concludes by agreement, the rules set forth in the previous sections shall apply; but if the assets

return to the administration of the bankrupt, they shall be considered sold only for purposes of this article.

Chapter III

The Intervenors

ARTICLE 58. In order to represent the interests of the creditors in the vigilance of the actions of the trustee and of the administration of the bankruptcy, one, three or five intervenors shall be appointed, in the judgment of the judge, according to the amount and importance of the bankruptcy, who shall form the intervention in the same.

The necessary substitutes may also be named.

ARTICLE 59. The judge, in the judgment which declares the bankruptcy, shall provisionally name the intervenors until, in the creditors' meeting, the final appointments are made.

Only in cases where the judge does not know who the creditors of the bankrupt are may he designate as intervenors persons who do not fulfill the above-mentioned condition.

In this case, they shall proceed to the immediate substitution of the provisional intervenor or intervenors who are not creditors as soon as they have the necessary information.

ARTICLE 60. The appointment of intervenors shall be made by the meeting of the creditors in nominal voting.

If it is necessary to elect three intervenors, two shall be elected by the votes which represent the majority of claims present. The third intervenor shall be named by the creditors present who do not form the majority.

The same shall be done if there are to be five intervenors, but then the minority shall name two of them.

For these purposes, each creditor present shall be able to vote only for two or three intervenors, according to whether three or five intervenors are to be named.

In the same meeting in which the intervenors are designated and in the same manner in which that is done, substitutes may be named.

ARTICLE 61. Either by official act or upon the request of any creditor or provisional intervenor, the judge may convene a meeting of the creditors for the purpose of naming the permanent intervenors.

ARTICLE 62. The intervenors shall carry out their duties during the entire time in which the bankruptcy continues, but they may be removed by the judge in the same cases and circumstances as the trustee.

The meeting of creditors may remove all or some of the intervenors, as long as they designate substitutes, if there are none already.

The removal of the intervenors designated by the minority, if it is not consented to by two-thirds of the minority, signifies the removal of all intervenors.

Appendix

In order for the creditors' meeting to validly agree on the removal, it is necessary that the majority of the creditors representing the majority of the debt attend the meeting.

ARTICLE 63. The judge shall notify their designation to the creditors elected as intervenors, who were not present at the meeting in which they were named, through personal notification and shall call a meeting of all of them which shall be held within six days from the date on which they were notified, in order to advise them of the necessary measures to be taken in order to function as intervenors and to duly carry out the tasks with which they are confronted.

ARTICLE 64. All agreements of the intervenors shall be made by an absolute majority of the votes of all the intervenors.

ARTICLE 65. The creditors designated as intervenors and their substitutes shall accept or reject their duties within seventy-two hours of their notification of being named as intervenors.

Acceptance of the duties of intervenor is voluntary, but once accepted, it may not be abandoned, except for grave cause, in the discretion of the judge, who shall pass judgment on the reasons immediately and from which judgment there shall be no other recourse than responsibility.

ARTICLE 66. If there are no substitutes, vacancies in the intervenors' positions shall be covered by the creditors designated by the judge within twenty-four working hours following the opening of a vacancy, unless the creditors use their rights according to Article 60.

ARTICLE 67. The intervenors have all measures available to them which are relevant in the interest of the bankruptcy and of the rights of the creditors, among which are the following:

I. Appealing the decisions of the judge and opposing those of the trustee which they consider prejudicial to the interests of the creditors or the rights granted to them by law;

II. Requesting the removal of the trustee and exercising actions of responsibility against the judge;

III. Requesting the judge to order the appearance before them of the bankrupt or the trustee so that they can inform them about the activities of the bankruptcy. The judge shall do whatever is necessary to comply with their request, except for just cause, of which he shall inform them;

IV. Designating one or more intervenors to attend all activities of the administration of the bankruptcy or of the liquidation of those which are specifically set out;

V. Informing the judge of all acts of extraordinary administration which he should authorize, and of all other acts of administration which they deem necessary or which the judge or trustee request;

VI. Requesting the judge to convene an extraordinary meeting of the creditors;

VII. Informing, every two months, in writing, the other creditors of the progress and state of the bankruptcy, and

when appropriate, of the decisions of the trustee or judge which may affect their collective or individual interests;

VIII. Performing other duties which the law expressly designates to them or which it gives, in general, to the creditors.

ARTICLE 68. The intervenors shall designate one of their members to meet with the judge or trustee and who shall represent them in civil proceedings.

ARTICLE 69. The intervenors, in order to accurately comply with their duties, shall have, together and individually, the most ample freedom to examine the books, correspondence and other papers of the bankruptcy.

ARTICLE 70. The intervenors shall have the right to a fee, which shall be set by the judge, and which shall not be given to them until the conclusion of the bankruptcy.

The decision of the judge shall be appealable.

ARTICLE 71. The intervenors shall be responsible to the creditors under the same terms as those set for the responsibility of the trustee to the estate.

ARTICLE 72. If the intervenors group cannot be set up even provisionally, because there is an insufficient number of creditors, because they will not accept the duties designated to them, because of their residence outside the jurisdiction of the bankruptcy or because of other similar reasons, the judge shall issue a decision expressing the reasons which prevent the existence or functioning of the intervenors.

If at any later time it becomes possible to designate intervenors or the continuation of their functions, the judge shall do so by official act or at the request of any creditor, the trustee or the bankrupt.

Chapter IV

The Creditors' Meetings

ARTICLE 73. A meeting of the creditors shall be held ordinarily in the cases provided for by the law and in the special cases which are necessary.

ARTICLE 74. The meeting of creditors shall be convened by the judge. The meeting shall be reported, by personal notification, to the intervenors, the bankrupt and the trustee.

The other creditors shall have legal notification through the publication of the meeting according to this law.

ARTICLE 75. Any resolution which deals with matters not included in the agenda shall be null, unless all those who should have been notified are present and agree.

ARTICLE 76. Notices of meeting of creditors shall be published in the same manner as that established for the judgment of the declaration of bankruptcy.

ARTICLE 77. The creditors shall attend the meeting themselves or by proxy, which may be done by a document which is not a public document or by a telegram sent to the judge, not subject to ratification.

In the latter case, the manager of the issuing office shall certify the identity of the person who made the representation. The proxy shall be stamped before the judge in the hearings.

The bankrupt may also be represented by proxy, unless the judge has ordered his personal appearance.

Those who represent several creditors shall have as many votes and as much voting power as the people they represent would have had if they had attended the meeting.

The judge shall provide all necessary elements for the proper functioning and order of the meetings of creditors.

ARTICLE 78. The meeting shall be convened no matter how many creditors attend or how many claims are represented.

ARTICLE 79. Each creditor shall have a vote, and, except in cases where the law requires special majorities or majorities of capital, the meeting may adopt agreements by a simple majority of the creditors present.

Upon voting, each creditor shall record the amount which, for these purposes, has been recognized for him.

The assignees of divided claims shall only have between them the vote which corresponds to the assignor, unless they prove with authentic documents that the assignment and division were done before the date to which the declaration of bankruptcy is retroactive.

ARTICLE 80. Creditors whose demands for recognition of their claims have been declared admissible by the trustee and the intervenors may attend the meetings of creditors.

In the case of discrepancy, the judge must resolve it and shall show the claim that is recognized to the creditor for his participation in the meetings.

The judge may proceed in the same manner when he deems it necessary without considering the reports of the trustee and intervenors.

ARTICLE 81. If, on the day established for the meeting, all items on the agenda cannot be handled, the meeting shall be continued on the following working day.

The judge, before ending the session, shall indicate the hour on which the meeting shall be continued.

ARTICLE 82. The judge, as chairman of the meeting, shall provide for the drawing up of the minutes of the meetings which shall be signed by the secretary, the trustee and the intervenors.

Appendix

TITLE III

The Effects of the Declaration of Bankruptcy

Chapter I

Effects on the Bankrupt

FIRST SECTION

Limitations on the Capacity and Exercise of Personal Rights

ARTICLE 83. By the judgment declaring the bankruptcy, the bankrupt is deprived of the right to the administration and disposition of his assets and those assets he acquires, until the bankruptcy is finalized.

ARTICLE 84. Although the judgment declaring bankruptcy docs not limit the civil rights of the bankrupt, except in the cases established by law, the bankrupt cannot carry out any activities which require full possession of such rights.

ARTICLE 85. The judge shall have the judgment declaring bankruptcy communicated to the post office, telegraph and other analogous offices. By virtue of this notification, the directors of those offices shall assure that the correspondence and communications directed to the bankrupt are delivered to the trustee.

The trustee shall open such, in the presence of the bankrupt or his agent, if he attends, returning to him

immediately all such correspondence and communications which have no relation to the interests of the bankruptcy.

ARTICLE 86. The divulgence of the information so acquired shall be cause for removal of the trustee, carried out by a trial, without waiving the penalties which are appropriate.

ARTICLE 87. The judgment declaring bankruptcy produces all the civil and penal effects of bail for the bankrupt, who cannot leave the place of the bankruptcy without the judge authorizing it and without leaving an agent sufficiently empowered to represent him.

The judge shall have to consult with the intervenors in the case where he is considering granting permission to the bankrupt to leave the jurisdiction.

Whenever it is required by the judge, the bankrupt shall appear before him, the trustee, the intervenors or the creditors' meeting, except where, due to a legitimate conflict, the judge authorizes him to appear through an agent or attorney in fact.

ARTICLE 88. The general partners shall be subject to the requirements established by this law for a bankrupt.

ARTICLE 89. In bankruptcies of corporations, these shall be represented by those set forth in their bylaws and, if they are not, by their administrators, managers or liquidators, who shall be subject to all obligations imposed by this law on a bankrupt.

In the absence of the above, the corporation shall be represented by an agent of the Public Ministry.

ARTICLE 90. In the case where the merchant dies after the declaration of bankruptcy or when his estate has declared bankruptcy, the executors and the heirs shall have, in the course and proceedings of the bankruptcy, the obligations which correspond to the bankrupt, with the exception of when they are bonded.

SECOND SECTION

The Penal Responsibility of the Bankrupt

ARTICLE 91. For legal purposes, there are three classes of bankruptcy:

1. Accidental bankruptcies;

2. Culpable bankruptcies;

3. Fraudulent bankruptcies.

ARTICLE 92. An accidental bankruptcy is understood to be where a merchant suffers misfortune, arising accidentally in the regular and prudent activities of the good administration of his business, which reduces the capital of the business to the extreme of having to cease making its payments.

ARTICLE 93. A culpable bankruptcy shall be considered to be where a merchant, by actions contrary to the requirements

for good administration of his business, has caused, augmented or worsened the state of cessation of payments, such as:

I. Where domestic and personal expenses have been excessive and disproportionate to the economic possibilities of the business;

II. Where there are disproportionate sums lost due to gambling, bets and similar operations in stock or other exchanges;

III. Where there are losses as a result of purchases, sales or other operations to delay the bankruptcy;

IV. Where, within the period to which the bankruptcy is retroactive, there were sales with losses, for less than the market price, of items bought on credit and on which money was still owed;

V. Where the expenses of the business are much greater than the accounts receivable, according to its capital, its activity and other analogous circumstances.

ARTICLE 94. A culpable bankruptcy shall also be considered to be, except in cases where they allege and prove their innocence, where a merchant:

I. Has not maintained his accounting records for his business according to the requirements of the code, or if he has, there has been an error which has caused damages to a third party;

II. Does not file his declaration of bankruptcy in the three days following that established as the day of cessation of payments;

III. Fails to present the documents required by this law in the manner, circumstances and periods set forth.

ARTICLE 95. Those declared to be in bankruptcy who are determined to be culpable shall be punished by one to four years in prison.

ARTICLE 96. A fraudulent bankruptcy shall be considered to be where a merchant:

I. Absconds with all or part of the assets, or fraudulently commits, before the declaration but after the date to which the bankruptcy is retroactive, acts or operations which increase his liabilities or decrease his assets;

II. Does not keep accounting books, or alters, falsifies or destroys them in order to make it impossible to comprehend the true situation of the business;

III. Favors, after the date to which the bankruptcy is retroactive, one creditor by making payments or granting him guarantees or preferences to which he had no right.

ARTICLE 97. The bankruptcy of brokers shall be deemed fraudulent when it is proven that they committed some act or operation different from those of their profession for their own account, either in their own name or that of another, even when the reason for the bankruptcy is not a result of these actions.

If the bankruptcy comes about due to the broker's having made a guarantee of the operations in which he was involved, a fraudulent bankruptcy is presumed, except on proof to the contrary.

ARTICLE 98. The bankruptcy of a merchant whose real situation cannot be understood from his books, shall be presumed fraudulent, except on proof to the contrary.

ARTICLE 99. Merchants declared to be in fraudulent bankruptcy shall be punished by five to ten years in prison and a fine, which may be as high as ten percent of the liabilities.

The amount of these fines shall be paid from the assets which remain after paying creditors or from those which the bankrupt has or acquires after the conclusion of the bankruptcy.

ARTICLE 100. An agreement reached in a suspension of payments or a bankruptcy shall not prevent the corresponding penalties from being applied according to the judgment issued in the penal proceeding which would have followed.

But, if the judgment declared the bankruptcy culpable, execution shall be suspended against the debtor who entered the agreement, unless he is later judicially declared to be in noncompliance with his agreement.

ARTICLE 101. When the bankruptcy of a corporation is classified as culpable, the responsibility shall fall on the

directors, administrators or liquidators of the same who are responsible for the acts which so classify the bankruptcy.

ARTICLE 102. Guardians who perform the business for minors or incompetents, in the cases set forth in civil legislation, or the agents who substitute for them in the case of their incapacity or incompatibility in the performance of the business, shall be subject to the rules set forth in the preceding articles for culpable or fraudulent bankruptcies.

ARTICLE 103. Those who aid or cooperate in any way, by previous or later agreement, or who directly cause someone to commit the crimes typified in this section, shall be punished by the penalties set forth in Articles 95 and 99 hereinabove.

ARTICLE 104. Persons included in the cases set forth in the previous article, without removing the penalties which correspond to them, shall also be condemned:

I. To losing any right which they may have to the estate of the bankruptcy;

II. To returning to the estate the assets, rights or actions, the loss of which was determined to be their responsibility, along with interest and damages.

ARTICLE 105. The spouse, consanguine ascendants or relatives of the bankrupt, who, without his consent have removed or hidden assets belonging to the bankruptcy, shall not be deemed to be accomplices to the fraudulent bankruptcy, but shall be considered guilty of robbery.

ARTICLE 106. Merchants and others acknowledged to be guilty of either culpable or fraudulent bankruptcy may also be condemned:

I. To not doing business during the time of the principal punishment;

II. To not performing any duties of administration or representation of any kind for mercantile companies during the same time.

ARTICLE 107. The person who by himself or through another seeks the recognition of a false claim in the bankruptcy or suspension of payments shall be considered the perpetrator of the crime referred to in Article 389 of the Penal Code.

ARTICLE 108. Trustees of bankruptcies shall be subjected to the rules issued in Titles X and XI of the indicated Penal Code.

ARTICLE 109. The previous provisions are applicable to trustees in suspensions of payments, and to the people referred to in Articles 29 and 45 of this law.

ARTICLE 110. The creditor who agrees, with the bankrupt or another, for his own interests, to benefits in exchange for voting in a certain way in any creditors' meeting, shall be punished by imprisonment from three months to three years and by a fine of five hundred to five thousand pesos and by the loss of his claim for the benefit of the estate.

The same penalties of prison and fine shall be imposed on the bankrupt or the person who represented him.

ARTICLE 111. Action shall not be taken against the crimes defined in this section without the competent judge having declared the bankruptcy or suspension of payments.

ARTICLE 112. A culpable or fraudulent bankruptcy shall be pursued upon the accusation of the Public Ministry.

ARTICLE 113. The classification of the bankruptcy shall be made in the corresponding criminal trial, for which the judge who makes the declaration of bankruptcy shall notify such declaration to the Federal Public Ministry.

ARTICLE 114. In cases of culpable or fraudulent bankruptcy, the responsible party may be detained, but the civil judge may require the presence of the bankrupt before him or before the organs of the bankruptcy, whenever be deems it necessary.

Chapter II

Effects on the Assets of the Bankrupt

ARTICLE 115. The bankrupt shall maintain the disposition and administration of the following assets:

I. Rights which are strictly personal, such as those related to his civil or political status, although they indirectly have an effect on the estate;

II. Assets which legally constitute the estate of the family;

III. The rights to assets of another which are not transferable by their nature or for whose transfer the consent of the owner is necessary;

IV. Earnings the bankrupt obtains after the declaration of bankruptcy through personal activities;

The judge may limit the exclusion, taking into account the necessities of the bankrupt and his family;

V. Food assistance, within the limits set by the judge, in accord with that indicated in the previous clause.

VI. Those which are legally not attachable, with the exceptions required by the universal character of the proceedings of bankruptcy and with the limitations deemed necessary by the judge.

ARTICLE 116. All acts of control or administration done by the bankrupt regarding assets included within the estate from the moment in which the judgment declaring bankruptcy is issued are void as against creditors.

The declaration of nullity shall not proceed when the estate gains from the prices obtained by the bankrupt.

ARTICLE 117. The judge, after seeing the report of the trustee and of the intervenors, shall decide on the extension, duration and quantity of the food assistance for the bankrupt

and his family. This decision may be appealed by any interested party.

ARTICLE 118. The date to which the effects of the bankruptcy should be retroactive, set out in the judgment, may be modified by official act, according to the circumstances of the records in the case and the considerations of justice resulting from those records, or on the petition of the trustee, the intervenors or any creditor, whenever, respectively, the judgment is issued or the demands are made before the day set forth for the recognition of claims.

ARTICLE 119. The same notice given about the judgment of the declaration shall be given about those which modify the date of retroactivity.

ARTICLE 120. The provisional decisions of the judge regarding the date of retroactivity shall not be appealable.

ARTICLE 121. Within the twelve days following the recognition of claims, the judge shall permanently fix the date of retroactivity.

Chapter III

Effects Regarding the Judicial Proceeding

ARTICLE 122. The actions taken and suits pursued by the bankrupt and those taken and pursued against him, which have anything to do with the estate, shall be continued by the trustee or with him, with the intervention of the bankrupt, in the cases in which the law or the judge so disposes.

ARTICLE 123. All suits exclusively dealing with goods or rights whose administration and disposition are maintained by the bankrupt are excepted from the above.

ARTICLE 124. The bankrupt may also intervene in other suits, if they affect goods or rights included in the previous article.

ARTICLE 125. The bankrupt may intervene in all cases as a third party assisting the bankruptcy.

ARTICLE 126. All pending suits against the bankrupt shall be tried jointly with the bankruptcy proceedings, except the following and without interference with that set forth in Article 122 and the powers given to the trustee to sell all assets:

I. Those in which the judgment has already been declared in the trial court;

II. Those dealing with secured claims or collateral.

ARTICLE 127. In both cases, when there is a writ of execution, they will be joined with the bankruptcy for purposes of classification and payment.

Appendix

Chapter IV

Effects On Pre-existing Legal Relationships

FIRST SECTION

Obligations in General

ARTICLE 128. From the moment of the declaration of bankruptcy:

I. For purposes of the bankruptcy all current obligations of the bankrupt shall mature.

If payment of debts which do not draw interest is made before the time set, a discount shall be made for interest at the legal rate for the time remaining from the moment of payment to that on which the claim should have matured;

II. The debts of the bankrupt shall cease accruing interest against the estate.

Secured claims are excepted up to the amount of the respective guarantee;

III. The claims of bondholders of corporations shall be calculated by the value of the issuance, with deduction made for any amount paid as redemption or refund;

IV. The debts of the bankrupt may not be legally offset, even by an agreement of the parties.

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The following are excepted:

a) The debts of the estate which are related to the claims of the bankrupt.

The offset shall not proceed when the claim against the estate or against the bankrupt was acquired by assignment, gift or other analogous way, after the date on which the effects of the bankruptcy arose;

b) The debts produced by a contract which is a current account;

c) Special partners, stockholders of corporations and partners in joint ventures which at the same time are creditors of the bankruptcy, of the corporation or of the joint venture, do not form part of the liabilities of the estate, except for the resulting difference owed to them after considering the amounts they were required to contribute as partners or stockholders.

V. Claims which are suspended shall be demandable against the bankruptcy.

The amounts which should be received from these claims shall be deposited in the credit institution designated by the judge, until, once the condition has passed, they are paid to the creditors.

If, before the condition has been met, the bankruptcy is concluded, the amounts should be paid to the debtor, if a full payment is made, or they shall be distributed among the other creditors.

ARTICLE 129. Claims subject to defeasance are considered unconditional.

ARTICLE 130. The creditor of a life annuity shall have the right to be given a life annuity in an insurance company which is equal or proportional, according to the reduction suffered in capital which was necessary at the moment of the declaration of bankruptcy to make the dividend.

ARTICLE 131. The guarantor or the bankrupt may not be obligated to make any payment until the obligation matures under the conditions agreed on and he shall preserve all the rights against the bankruptcy that civil legislation grants to him.

ARTICLE 132. In order to exercise the rights corresponding to obligations or the bankrupt which are not pecuniary or which have an undetermined or uncertain value, it is necessary to value them in terms of money.

ARTICLE 133. The amount of the claims for periodic loans or continuous loans shall be determined through the amount of the established payments, and to each one of those payments that so set forth, discounts for early payments shall apply.

ARTICLE 134. If the special partners, the stockholders or the limited partners have not delivered at the time of the declaration of bankruptcy the total amounts that they were obligated to contribute to the company, the trustee shall have the right to demand the installment payments which are necessary within the respective limit of responsibility.

Appendix

SECOND SECTION

Individual Liability

ARTICLE 135. If several or some or the debtors of an obligation owed jointly are declared in bankruptcy, the creditor has the right to receive from each estate the amount which corresponds to his claim until the debt is paid in full.

If the total amount of the payments received by the creditor from several debtors who are liable jointly for the debt exceeds the amount of the claim, the difference shall be returned to each estate in proportion to the amount which had been paid. If the bankrupt parties made guarantees to pay in a certain order, the amount in excess shall be paid to the last of the guarantors and the others who had overpaid, successively, before him, until the total is repaid.

ARTICLE 136. The bankruptcy or bankruptcies of individual debtors who are jointly liable to a common creditor have the right to require from the others the payment of their corresponding portion of the debt.

ARTICLE 137. Partial payment of an obligation before a declaration of bankruptcy limits the amount of the claim against the estate.

The debtor who paid may register in the bankruptcy of his co-debtor the amount of the payment made, but the portion that corresponds to him shall be delivered to the creditor, if he requests it, if the whole payment had not been made, up to the amount necessary to pay it.

ARTICLE 138. The amount which corresponds in the bankruptcy to a co-debtor or guarantor of the bankrupt shall remain a credit in favor of the creditor until the acceptance of his claim if said amount was secured by assets of the bankruptcy in guarantee of such claim.

THIRD SECTION

Pending Bilateral Contracts

ARTICLE 139. Bilateral contracts which are pending execution either totally or partially may be carried out by the trustee, upon authorization of the judge and a hearing with the intervenors.

Anyone having contracted with the bankrupt may demand that the trustee declare whether he is going to affirm or rescind the contract even before the terms of the contract require compliance.

The contracting party not in bankruptcy may delay execution of the contract until the trustee complies or guarantees compliance with the contract.

ARTICLE 140. If the business of the bankrupt is continued, all contracts related thereto must be complied with.

ARTICLE 141. Contracts of deposit, to open credit, commissions, and the like are rescinded by the bankruptcy of one of the parties, unless the trustee, upon authorization by the judge and a hearing with the intervenors, assumes the obligation, in agreement with the other contracting party.

That set forth in the Commercial Code regarding powers conferred to agents is not hereby disturbed.

ARTICLE 142. A declaration of bankruptcy suspends the activities of the active accounts, which shall be liquidated in order to exact or cover their balance in the manner and way which so corresponds.

ARTICLE 143. The bankruptcy shall not affect contracts made regarding assets or affecting those whose administration and disposition is maintained by the bankrupt, and, in general, contracts which are strictly personal and do not affect the assets of the estate.

ARTICLE 144. If the bankruptcy had purchased personal or real property from a party who had not yet delivered it, the seller cannot be required to deliver it unless the price therefor is paid or guaranteed to be paid to the satisfaction of the seller.

If the delivery had been made only due to a promise of sale, the seller may recover the item, as well as when the contract of sale was not written as a public document, when this is a legal requirement.

ARTICLE 145. If the seller of real property declares bankruptcy, the buyer has the right to demand the delivery thereof, after paying the price therefor, if the sale was perfected.

ARTICLE 146. The seller of personal property, which has not been paid for and which is en route for delivery to

the buyer in his storehouse or in the place agreed upon, may, if the buyer declares bankruptcy:

I. Change the payment according to legally allowed terms;

II. Detain the goods, although he does not have the necessary documents to change the payment. The opposition to delivery shall be substantiated in a hearing between the seller, buyer and the trustee.

ARTICLE 147. If, according to that set forth in this law, they decide to perform the contract, and the price has been set to be paid in installments, the seller may require a deposit.

The trustee may pay the price all at one time, obtaining a discount for immediate payment, expressed or implied in the contract, and lacking that, according to the market. Lacking both, the discount may be that set forth for early payment.

ARTICLE 148. When sales involve deliveries and some deliveries have already been made without being paid for, the trustee shall be obligated to pay for them, which shall be a requirement in order for the compliance set forth in Articles 147 and 162.

ARTICLE 149. In spite of the bankruptcy of the seller of personal property, the buyer may demand compliance with the contract if the property had been specified before the declaration of bankruptcy.

ARTICLE 150. In contracts for borrowing securities, the bankruptcy of the party borrowing the securities authorizes the trustee, at the maturity of the contract, to deliver the securities and demand the price. If this is not done, the party lending the securities may register in the estate the amount of the securities prior to the payment of the price agreed upon.

If the bankrupt is the party lending the securities, the trustee could pay the price and receive the securities. If that is not done, the party borrowing the securities could deliver the securities and register in the bankruptcy the price which corresponds.

ARTICLE 151. The trustee shall comply with contracts for futures which mature after the declaration of bankruptcy, through the recognition of or demand for the claim which results according to the terms of the same.

The difference shall be liquidated according to the value of the things or securities on the day of the agreed maturation.

ARTICLE 152. The bankruptcy of a partner of a general partnership, of a limited liability company or of a limited partnership or joint stock company, gives the right to the trustee to request his contribution and the corresponding profits therefrom, according to the last balance sheet of the entity, or to continue with the entity, if the judge so authorizes, after a hearing with the intervenors, as long as the other partners or shareholders do not prefer to exercise the right of partial dissolution of the entity, unless the partnership agreement or incorporation papers provide for a different solution.

ARTICLE 153. The bankruptcy of the lessor does not rescind the lease, except upon agreement to the contrary, for real property.

The bankruptcy of the lessee authorizes the trustee to rescind the contract, after paying a fair indemnification in the appropriate case, which shall be set by the judge if the parties cannot reach an agreement therefor, after a hearing with the trustee, the intevenors and the lessor.

ARTICLE 154. Contracts for the rendition of services and for labor, of a strictly personal type, which are to the benefit of the bankrupt or which he is charged with performing, are not rescinded.

Those that are necessary for the continuation of the business or for the administration or liquidation of the bankruptcy may be continued by the trustee.

ARTICLE 155. A contract for work at a fixed price shall be rescinded by the bankruptcy of one of the parties, unless the trustee, with the consent of the other contracting party and after judicial authorization, agrees to comply with the contract.

ARTICLE 156. The bankruptcy of the insured does not rescind the insurance contract if the object insured is real property, but if it is personal property, the insurer may rescind it.

If the trustee of the bankruptcy docs not notify the insurer of the declaration of bankruptcy within thirty days thereafter, the insurance contract shall be rescinded from that date.

In life insurance or mixed insurance, the trustee of the bankruptcy of the insured may give up the insurance policy or obtain a reduction in the amount of insurance in proportion to the premiums already paid according to the calculations considered by the insurer in making the contract and taking into account the risks incurred by the insurer. At the same time, they can make any other arrangement which would be of economic benefit to the estate.

That set forth in the last paragraph is applicable to contracts for investments.

ARTICLE 157. The bankruptcy of the insurance company rescinds the insurance contract, if in the maximum time of one month from the declaration, the trustee, with the authorization of the judge and after a hearing with the intervenors, does not insure the insured risks with another company or does not guarantee that the business will continue functioning.

FOURTH SECTION

Removal from the Bankruptcy

ARTICLE 158. Goods, securities or any kinds of assets which are part of the estate of the bankrupt and which are identifiable, whose ownership was not transferred to the bankrupt by a definite and irrevocable legal title, may be removed by their legal owners, by the exercise of the corresponding action before the judge of the bankruptcy.

If there is no opposition to the request for removal, the judge may grant, with no further proceedings, the removal

requested. If there is opposition, the dispute shall be resolved through trial proceedings.

The decisions issued by the judge, whether or not through litigation, shall be appealable, without execution of the decisions being suspended, by any interested party.

The trustee shall exercise the rights and shall comply with the obligations which the bankrupt has over these assets.

ARTICLE 159. As a result, assets which are found in the following situations or others of an analogous nature, may be removed from the estate:

I. Those which may be claimed according to law;

II. Real property sold to the bankrupt but not paid for by him, when the sale was not duly registered;

III. Personal property bought for cash if the bankrupt has not paid the total price at the time of the declaration of bankruptcy;

IV. Real or personal property purchased on credit if they had agreed upon rescission based on non-compliance and if there is documentation of that in the corresponding public registers;

V. Securities issued or endorsed to the bankrupt as payment for sales made for the account of another, as long as there is proof that the obligations arise from them and the item is not recorded as a current account between the bankrupt and his constituent;

VI. Assets which the bankrupt should return because they are under his control for one of the following reasons:

a) Deposit, administration, lease, rental, usufruct, trust or consignment based upon appraisal contracts, if in this case the bankruptcy was declared before the manifestation by the buyer that he is going to take back these items, or if the period set forth for doing so has not passed;

b) Commission for purchase, sale, transfer, delivery or collection;

c) That transferred out of the current account for delivery to a determined person for the account of the constituent, or to satisfy obligations which had to be complied with in the residence of the bankrupt.

When the claim resulting from the remittance was made upon payment by a letter of exchange, the legitimate owner of said letter may obtain removal of the same;

d) Security based upon a public document, on the warranty of a broker, in payments by general stores for deposit or in favor of a credit institution.

The trustee, upon previous judicial authorization and a hearing with the intervenors, may avoid the removal by satisfying completely the claim to which the goods were attached.

If the estate does not make use of this right, the creditor who is secured, once the removal is obtained, should sell

the security in the maximum period of one month according to the legal procedure established.

The amount of the sale shall be credited to the account of the secured creditor, who shall deliver to the estate any amount which exceeds his claim and any expenses related to the sale.

If, on the contrary, there is still an amount remaining against the bankrupt, the secured creditor shall in the classification for said amount assume the place that corresponds to him as a general creditor;

e) The amounts that were owed to the bankrupt for sales made for the account of another. The party requesting removal may also obtain the grant of the corresponding right of claim;

VII. Secured assets in the bankruptcy which belong to a third party or to which these third parties have the right of preference over the estate.

ARTICLE 160. Relative to the existence or identity of assets whose removal is requested, the following legal principals shall be taken into account:

I. According to that set forth in Article 158, the previous actions of removal only proceed, in general, when the assets are part of the estate at the time of the declaration of bankruptcy;

II. Nevertheless, if the assets are destroyed after the declaration, and the bankrupt had secured them, the party

requesting removal shall have the right to obtain from the estate payment of indemnification that he would have received or the transfer of the rights to the same;

III. If the assets were sold before the bankruptcy, there can be no removal of the price received for them; but if such sale had not become effective, the party requesting removal may obtain a transfer of the rights of the bankruptcy against the third party purchaser, and such party requesting removal shall deliver to the estate the difference; if more, between that which he collected and the amount of the claim.

The exercise of this right excludes the possibility of taking action against the estate;

IV. Assets that have been transferred, received in payment or exchanged for any legal title, and which are equivalent to those that were removable also shall be excluded.

V. Proof of identity may be made even when the assets have been taken from their packaging or unpacked or partially sold;

VI. Whenever removable assets have been given as security to third parties in good faith, the secured creditor may oppose the delivery as long as he is not paid the amount he is owed, the interest agreed upon and his legitimate expenses.

ARTICLE 161. The removal of assets as referred to in this section is subordinate to compliance, on the part of the

party requesting removal, with the obligations that he had, based upon such assets, to the bankrupt or to the estate.

In cases of removal on the part of the seller who had received part of the price, the removal is conditioned upon the prior return of the part of the price already paid. The return of the price shall be proportional to its total amount, with relation to the amount or number of assets identified in the estate.

The seller and other parties requesting removal have the prior obligation to return to the estate all that they have been paid or owe for fiscal duties, transportation, commission, insurance and other expenses of preservation of assets.

ARTICLE 162. When the trustee, according to that set forth in this law, decides on the execution of the pending contracts, he may avoid removal of the assets, or, in the appropriate case, he may require their delivery to the estate, by paying the price to the seller.

Chapter V

Effects of the Bankruptcy on the Estate Between the Spouses

ARTICLE 163. Against the estate, the assets that the other spouse acquired during the marriage, in the five years prior to the date to which the effects of the bankruptcy are retroactive, are presumed to belong to the bankrupt spouse.

In order to gain possession of these assets, without interfering with the proper precautionary measures, the

trustee shall request a hearing in which, in order to obtain a favorable judicial decision, it shall suffice that he prove the existence of the matrimony during said time and the acquisition of the assets during the same period.

The spouse may oppose it, proving in said hearing, or in that proceeding set forth in Section IV of the Fourth Chapter, that said assets had been acquired with funds that may not be included in the estate of the bankruptcy because they are the sole property of the spouse, or that they belonged to the spouse before the marriage.

ARTICLE 164. If the spouse had against the other spouse who filed bankruptcy claims for onerous contracts or for payment of debts of the bankrupt, except on proof to the contrary, according to that set forth in the last paragraph of the previous article and in Articles 174 and 176 of the Civil Code of the Federal District, it shall be presumed that the claims have been made and that the debts were paid with assets of the bankrupt, for which the other spouse shall not have a claim against the estate.

ARTICLE 165. All assets belonging to the marriage shall be included in the estate of the bankruptcy of the bankrupt spouse.

If the other spouse requests the termination of the marital relationship, according to civil law, he may claim the assets and rights which correspond to him.

ARTICLE 166. With the exceptions set forth in this chapter, the bankruptcy of a spouse does not affect the assets

of the other nor the salaries, wages, fees and earnings that the other obtained for personal services, employment or the exercise of his or her profession, business or industry.

If some of said assets or their equivalent are included within the estate of the bankruptcy of the other spouse, the owner may claim them in an unconditional manner in the way set forth in the previous fourth section.

ARTICLE 167. If the matrimonial property only consists of products of the assets, these shall be included in that set forth in the previous article.

Chapter VI

Effects of the Bankruptcy on Actions Taken Prior Thereto

ARTICLE 168. All actions taken by the bankrupt before the declaration of bankruptcy or from the date to which the bankruptcy is retroactive, which knowingly defraud creditors, shall be null as against the estate, if the third party who participated in the act knew of the fraud.

This last requirement shall not be necessary in the case of gifts.

ARTICLE 169. The following are presumed to have been carried out as a fraud to the creditors, unless proof is admitted to the contrary, and shall be null as against the estate:

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1. Actions and transfers which are free, which occur after the date to which the bankruptcy is retroactive and those in which, not being free, the consideration received by the bankrupt is of a value clearly inferior to that given by the bankrupt;

2. The payment of debts and obligations not yet matured to or by the bankrupt, with money, securities or any other means, after the indicated date.

When the estate can take advantage of payments made to the debtor, they will not be null.

If third parties return to the estate what they received from the bankrupt, they may request recognition of their claim when appropriate;

3. The discount of any items by the bankrupt, after said moment, shall be considered as a premature payment.

ARTICLE 170. When, after the date to which the bankruptcy is retroactive, the following are done, they shall be considered as done to the fraud of creditors and shall be null against the estate, except when the interested party proves good faith:

1. Payment of matured debts, made in a way different from that which corresponds to the debt, given the nature of the obligation;

2. The establishment of rights to goods or assets of the bankrupt, in guaranty of debts incurred prior to the date of

retroactivity, for which debts there was no original agreed guarantee, or for the loan of money, goods or merchandise, before or after the indicated date, whose delivery was not specified to be made at the time of making the obligation before a notary public or witnesses who intervened therein.

ARTICLE 171. The registration of a security interest made before the date of the declaration of bankruptcy shall be valid.

ARTICLE 172. Payments, actions and transfers made for purchases after the date of retroactivity shall be presumed to be in fraud of creditors if the trustee or any interested party proves that the third party knew the situation of the bankrupt.

ARTICLE 173. Whenever it is decided to return to the estate any object or amount, it shall be understood, although not expressed, that any corresponding items produced therefrom or interest produced thereby during the period in which it was enjoyed, except in cases of good faith, shall also be returned.

ARTICLE 174. If the assets, the subject of these actions, have left the ownership of the person who obtained them to be acquired by a good faith third party, indemnification by the first purchaser may be demanded for the damages caused, except on proof of his good faith.

The same responsibility falls on the person who, in order to avoid the effects of the revocation, destroyed or hid the assets referred to herein.

Appendix

TITLE IV

The Operations of Bankruptcy

Chapter I

Security and Proof of Assets

FIRST ACTION

Seizure of the Assets and Papers of the Bankrupt

ARTICLE 175. Based upon the judgment declaring bankruptcy and according to that set forth before, the seizure of the assets, documents and papers of the bankrupt shall be proceeded with according to the following rules:

I. Seizure shall be done by the judge or appropriate secretary, who shall set forth in the proceedings the reason for carrying out these activities, for which purpose non-working days are available too;

II. Stores, deposits of merchandise and assets and other pertinent locations of the business of the bankrupt shall be closed and the doors and windows locked;

III. The seizure of assets not belonging to the business shall be carried out in the same manner and the judge shall be able to adopt the necessary security measures required by the nature and situation of the assets seized.

The judge shall also secure all assets subject to seizure by personal actions; he shall order the bailees of them to

deliver them to the trustee and order the people who know what is in the depository to communicate with the trustee; and he shall make the necessary annotations in the Public Registry;

IV. In the same manner, the offices or studies of the bankrupt shall be seized and the number, kinds and state of the books of the business which are found shall be written down at a hearing and in each one, after the last entry, a note about the pages in the book shall be written, which shall be signed by an official who handles seizures. If the books do not have the formalities prescribed by the Code of Commerce, that shall be stamped on all pages.

The property shall be duly cared for as well as the documents and papers;

V. During the action of seizing the indicated places, an inventory shall be made of all money, bills of exchange and other securities which are found and the necessary measures for their security shall be taken;

VI. The judge or the secretary, where appropriate during the proceedings, shall indicate the course of events to be followed if there are items of personal property which were not found in the places searched and by their nature or due to convenience they would not be kept there.

ARTICLE 176. When the bankruptcy is of one of the entities indicated in Article 4, the seizure of assets and papers shall extend to the partners who are general partners.

ARTICLE 177. Upon giving notice of the judgment of bankruptcy, notice shall also be given of the prohibition against paying or delivering assets to the bankrupt, indicating that if it is not done through the trustee there is a penalty of double payment in case of disobedience.

ARTICLE 178. At the same time, all people who possess assets or effects of the bankrupt shall be prevented from acknowledging these through promissory notes, which shall be delivered to the judge, under the corresponding penalties.

ARTICLE 179. The previous provisions have special application to commercial and banking entities which have assets of the bankrupt, whatever may be their motive.

ARTICLE 180. The proceedings for seizure shall be initiated immediately upon the issuance of the judgment of declaration of bankruptcy, for which the judge should take all necessary measures for the circumstances and issue all resolutions necessary for the immediate seizure of the books, papers and assets of the bankrupt, and for compliance with that set forth in the previous articles, considering for these purposes as working days, all the days and hours necessary.

ARTICLE 181. In the proceedings for seizure, the trustee, the representative of the intervenors if said representative has already accepted and affirmed his duties, and the bankrupt or his agent, may attend.

ARTICLE 182. Bills of exchange and other securities which are to mature immediately or which require, in an

immediate manner, a payment to be made for the preservation or exercise of rights, shall be reported and delivered to the trustee for the purpose of the necessary proceedings. The bankrupt shall transmit as soon as possible all documents found in this case.

ARTICLE 183. If there are assets which are not found in the jurisdiction over which the judge presides, letters requisitorial shall be sent by the most rapid means possible to obtain compliance with the orders, without interfering with the ordinary way in which normal documents or the proceedings are sent.

If the holders of these assets are persons of known solvency and responsibility, according to their reputation, a depository shall be established with them, foregoing the expenses of transfer until the trustee can resolve the situation.

ARTICLE 184. The examination of the books, documents and papers of the bankrupt shall be done by those who have the right to do so, in the location in which they are found; but the judge, at the request of the trustee, may authorize their removal from the same.

ARTICLE 185. The following objects shall not be stamped nor kept in the manner indicated in Article 175:

1. Those exempt from seizure;

2. Things which require immediate sale;

3. Bills and other securities which mature immediately or whose immediate payment is necessary;

4. Cash, which shall be turned over to the trustee for deposit; if the trustee has not taken possession, the judge or secretary handling the proceedings shall deposit it;

5. Those which, according to the judge, are necessary, if continuation of the business is agreed upon, for the normal development thereof.

A memorandum shall be written about all these items and they shall be included in the inventory when it is made, according to the second section of this title.

ARTICLE 186. Minutes of the proceedings for seizure shall be drawn up, and signed by the judge or secretary presiding over them and the trustee, the intervenors and the bankrupt or his attorney, if they attended.

SECOND SECTION

Preparing the Inventory and Balance Sheet

ARTICLE 187. The trustee should initiate the inventory of the assets seized, at the latest within the three days following the taking of possession.

He shall request previous authorization from the judge, who shall grant it in proceedings, to lift the seals. If, during the seizure, judicial depositories were designated for the administration or sale of certain assets due to the trustee's not having taken possession of his duties, the trustee, at the beginning of the inventory, shall request the judge to deliver these assets or what was obtained from them to him.

ARTICLE 188. If, at the time of initiating the seizure, the trustee foresees the possibility of writing the inventory in one day, the stamping of the assets shall be omitted.

ARTICLE 189. The bankrupt or his attorney, the intervenors and any other creditor who so requests, may attend the preparation of the inventory, of which they shall have been notified previously.

ARTICLE 190. In the case of the bankruptcy of a deceased merchant, as well as in the case of the bankruptcy of the estate of a decedent, if the declaration coincides with the formation of the inventory, the trustee may continue its formation from that moment.

If the inventory is already done, the judge, after a hearing with the trustee, shall decide if it shall be adopted, revised or if a new one should be made. The decision of the judge shall be appealable without execution being suspended.

ARTICLE 191. The inventory shall be made by reporting and describing all personal and real property and all kinds of securities. An attempt shall be made to separate in the report the assets and effects which are necessary for the business from the rest of them.

If the bankrupt presented the report referred to in Article 6 of this law, the trustee shall make a careful comparison of his inventory and the report of the bankrupt and shall inform the judge of his findings.

ARTICLE 192. It should not take more than ten days to prepare the inventory.

If the trustee believes it is impossible to do so within said time period, he should explain the reasons to the judge and request an extension, which may not be longer, in any case, than another twenty days.

The negligence of the trustee in complying with this duty may be justification for removal.

ARTICLE 193. The trustee shall take possession of the assets and rights which are taken from the debtor as he is making the inventory.

For these purposes, his position is that of a judicial depository.

ARTICLE 194. The inventory and appraisal of the assets found outside the jurisdiction of the judge may be done by delegation, in the manner set forth in Article 45.

The letters requisitorial may be sent telegraphically. The judges to whom the letters are sent shall proceed in this case and in those of Article 183, without the slightest delay, and they are responsible for any damage suffered by the estate due to their negligence.

ARTICLE 195. If the bankrupt did not present, at the declaration of the bankruptcy, the general balance sheet for the business, or when the declaration of bankruptcy was made at the request of creditors or by official act, he shall be allowed to do it in the shortest time possible, which time shall not exceed ten days, putting at his disposal for these purposes the books and papers of the bankruptcy which he needs, without taking them from the offices.

If, in the case of the absence, incapacity or negligence of the bankrupt, he does not make the general balance sheet of the business in the time period set forth, the trustee shall do it within a short period of time, not greater than fifteen days.

ARTICLE 196. The appraisal of the seized assets shall be done in the most convenient way, simultaneously with the preparation of the inventory and, in all cases, within the time period set by the judge, including the inventory, which may not be longer than two months.

The appraisal shall be made based upon market value.

Chapter II

Administration of Bankruptcy

ARTICLE 197. According to that set forth in the first and second chapters of Title II of this law, the administration of the bankruptcy and the vigilance of the performance thereof correspond to the judge, which duties shall be extended to the trustee, who shall take the measures necessary for the preservation of the assets and of the rights and actions of the estate and for its liquidation in the cases and by the means established by this law.

ARTICLE 198. The following pertains to the trustee:

I. Incurring the normal expenses for the preservation and repair of the assets of the estate;

II. Making collections of the claims of the bankrupt;

III. Filing registrations for pending liens in favor of the bankrupt, as well as performing all acts necessary for the preservation of assets and rights and to avoid damages to the estate;

IV. Depositing money gathered in the seizure or in later collections from sales made or other operations of the business.

The judge may permit him to retain those amounts necessary for ordinary expenses or for the extraordinary ones which the former authorizes.

ARTICLE 199. The trustee shall request authorization from the judge to proceed with the immediate sale of those things which cannot be preserved without deterioration, damage or exposure to serious deterioration in price or without their preservation being costly in comparison to the utility they can provide.

For these sales, the rules on convening assets into cash shall be followed, although the judge, in a reasoned decision, may dispense with those steps which interfere with these sales so much as to damage the ends being pursued.

ARTICLE 200. According to the proposal made by the trustee, the judge may decide on the provisional continuation of the business of the bankrupt.

ARTICLE 201. The continuation of the business shall be granted whenever the interruption thereof may cause

serious damage to creditors by a lessening of value due to the separation of the elements which compose it and, in general, whenever, from the report of the trustee and from an expert and if the judge deems it necessary, they decide that the business is viable and that there is social utility in its preservation.

ARTICLE 202. The acts of immediate sale and of preservation set forth in this law, as well as those of collection, shall be done by the trustee, but if he has not taken possession of his duties, the judge shall designate a judicial depository which shall carry out the previous operations until the trustee takes over his duties.

Chapter III

Turning Assets into Cash

ARTICLE 203. Once the judgment of declaration of bankruptcy is signed and the recognition of the claims is completed, the trustee may proceed without delay to sell the assets included in the estate.

For these purposes the judge shall propose the manner and method for the sale.

The judge, after hearing with the intervenor, shall decide what is necessary, which shall not be changed without a reason based on his opinion.

ARTICLE 204. The judge is obligated to observe the following order of preference with regard to the sale of assets,

from which he may deviate for good reason, according to that set forth in the previous article:

I. Sale of the business, as an economic unit and of the assets that make it up;

II. If the business has several establishments or branches, or due to the complexity of its activities, partial sales of groups of assets able to be sold separately and apart from the business may be made;

III. Total or partial sale of the assets of the enterprise, with the continuation of the business;

IV. If it is not possible to proceed in one of the previous manners, the assets and effects which make up the business shall be sold separately.

ARTICLE 205. In the manner set forth in Section IV of the previous article, the other assets of the bankrupt shall be sold, unless there are other groups of assets among them which form businesses, in which case they shall proceed with these in the manner established in Sections I through III of the preceding article.

ARTICLE 206. From the present rules on the sale of assets, the following assets shall be excluded:

I. Those which require immediate sale;

II. Those on which there has been placed a demand for removal from the estate, according to that set forth in

Section IV, Chapter IV of Title III, until, by means of an unappealable judgment, the illegality of the claim is not declared;

III. Those indispensable for the continuation of the business, when this has been authorized.

ARTICLE 207. The sale of the assets shall be stopped and the sale of assets already initiated shall be suspended if a proposal for agreement with the requirements established in this law is presented, whenever, in the opinion of the judge, it has serious possibilities of being admitted and approved.

ARTICLE 208. The sale of the business shall be made through appraisal by an expert and a judicial decision regarding acceptance of the value appraised. The experts shall be named by the trustee and by the judge. In case of disagreement, a third shall be designated by the judge. If, within three days from the announcement to name an expert, it is not done, the judge shall so name it.

ARTICLE 209. For the separate sale of different groups of assets which form the business, the provisions in the previous article shall be taken into account.

ARTICLE 210. Once the sale of assets on hand is concluded or once the period for which continuation of the business was authorized has terminated, they shall proceed with the rest of the assets in the manner indicated in the following article.

ARTICLE 211. Once the report of the trustee and that of the intervenors has been reviewed, the judge shall decide

if the sale of the personal property included in Section IV of Article 204 and Article 205 has to be made in the manner established in Article 598 of the Code of Civil Procedure or through direct sale by the trustee.

In order to regulate prices in each case, the following shall apply:

I. If the assets formed part of the business of the bankrupt, their prices shall be set according to their cost, their invoices and expenses incurred later, being increased or decreased according to the current prices of analogous assets in the marketplace;

II. The other personal property shall be appraised by experts named by the trustee and by the bankrupt, according to Article 208.

ARTICLE 212. The judge shall not authorize the sale of the above-mentioned assets at a price less than cost plus later expenses unless, from an expert's express report, it is deduced that it is impossible to obtain higher prices.

ARTICLE 213. The sale of real property, except in the cases in Sections I, II and III of Article 204, shall be at public auction in the jurisdiction of the judge of the bankruptcy or of the judge of the place where it is located.

ARTICLE 214. Articles 566, 570, 572, 574, 576 and 581 of the Code of Civil Procedure are applicable to these auctions of real property.

ARTICLE 215. If there is no bidder in either the first or second auction, the judge may decide on either a third auction or the suspension of the proceedings for no more than six months or, on the authorization of the trustee, to sell them privately.

ARTICLE 216. Articles 587 through 590 of the Code are equally applicable although, in the case of Article 588, the deposit shall remain entirely for the benefit of the estate and in all such cases the trustee shall substitute for the debtor.

ARTICLE 217. The purchaser has the right, by the judge of the bankruptcy, to have a decree issued for the cancellation of the liens registered which encumber the goods being sold.

ARTICLE 218. If on the date of the judgment of declaration of bankruptcy, a secured creditor or other privileged creditor had begun attachment proceedings on the assets of the bankrupt, the trustee shall be in charge of carrying out such attachment, in the time set by the judge.

ARTICLE 219. In the case where the successful bidder in any auction does not pay the price within the period set by the judge, which may not exceed one month, the judge shall order a new auction and deem the prior auction ineffective for purposes of Articles 214 and 215.

Appendix

Chapter IV

The Distribution of the Assets

FIRST SECTION

Recognition of the Claims

ARTICLE 220. The creditors of the bankrupt who want to perfect their claims against the estate should request recognition of the same, which shall be done by the judge before a creditor's meeting especially convened for such purpose.

ARTICLE 221. The creditors shall request, in writing, from the judge of the bankruptcy, the recognition of their claims, attaching to their petition the documents which justify them and copies of the same.

If documents do not exist, they shall attach the itemized account for their claim indicating the reason therefor and the corresponding copies.

Once these documents and copies are compared, a note shall be placed at the bottom of the copies that the originals are in the court and they shall be returned to the interested party.

ARTICLE 222. The petition for recognition of claims shall contain the information indicated in Article 255 of the Code of Civil Procedure, setting forth also the place which, in the judgment of the petitioner, corresponds to the claim for its classification and priority.

ARTICLE 223. For the creditors who reside abroad, the judge may extend the period for presentation of the petition for recognition according to the circumstances in each case, up to the same day set for the meeting of the recognized creditors.

ARTICLE 224. Creditors who did not present the petition for recognition within the set time, shall lose any privilege they may have and they shall be reduced to the class of common creditors to receive any amounts that remain when they attempt to make their claims. Recognition of the legality of their claims shall be proceeded with by trial, with notice to and hearing with the trustee and intervenors.

If the claimant proves that it was impossible to come forth at the proper time, he shall have his right recognized to obtain the portion which would have corresponded to him before, in later distributions and with the same priority as before.

ARTICLE 225. When a tardy creditor presents a claim and the entire estate of the bankruptcy has already been distributed, he shall not be heard.

ARTICLE 226. On the same day that a claimant presents his petition for recognition of a claim, the judge shall send a copy and accompanying proof to the trustee, so that be can make his decision regarding it.

ARTICLE 227. The following day, the trustee shall advise the intervenors and request their opinion on the petition.

ARTICLE 228. The trustee as well as the intervenors shall make their reports in a period of 10 days, which shall be communicated to the interested parties.

ARTICLE 229. The trustee shall place at the disposal of the intervenors all the books and papers of the bankrupt.

ARTICLE 230. If the proof offered is insufficient to prove the amount, class or priority, the trustee and the intervenors shall issue an opinion in which they shall report these circumstances and they shall request from the judge the preparation of the proof they deem necessary.

ARTICLE 231. The judge shall order the preparation of the proof considered necessary.

ARTICLE 232. The trustee shall make a provisional list of creditors, in which he shall include, with respect to each claim:

I. His report on its admissibility and the class and priority which correspond to it;

II. A report of the intervenors on the same matters;

III. The name, surname and address of the creditor;

IV. The address of the representative of the creditor if there is one designated;

V. The date of the petition for recognition and of its presentation;

VI. The amount claimed;

VII. The nature and alleged privileges on assets on which the creditor seeks execution and the proof on which the creditor bases it;

VIII. Other observations that he believes necessary in order to present the current situation of each claim and any variations.

ARTICLE 233. The trustee shall have written the complete list of provisional creditors at the latest ten days before that set forth for the meeting of recognized creditors and he shall submit it in duplicate to the judge who shall order that a copy stay with the secretary.

ARTICLE 234. With reference to this report, the judge shall decide provisionally who, and for what amount, has the right to vote in the meetings convened.

ARTICLE 235. This decision shall not harm the right of every creditor of the bankruptcy, of the interested parties in a disputed claim and of the debtor, to use, if they feel damaged, such right for justice in the recognition meeting. While this matter is not decided definitely, the determination of the judge shall be used.

ARTICLE 236. In the case of a petition for recognition of a claim which is not liquid, the trustee may oppose the liquidation made by the creditor. He should perform such liquidation when the creditor has not done it.

ARTICLE 237. All causes of action derived from the recognition of claims must be taken up before the judge of the bankruptcy.

ARTICLE 238. Creditors residing abroad shall designate, after the petition for recognition, a domicile in Mexico for purpose of notification.

If this is not done, the judge shall send the corresponding notifications to the Public Ministry to represent said creditors.

ARTICLE 239. The petition for recognition stops the statute of limitations from running.

ARTICLE 240. Any interested party may request to have the petitions presented and their corresponding documents shown.

This right and that of the previous article may be acted upon up to the day before that set for the meeting of the recognized creditors.

ARTICLE 241. The creditors and the bankrupt may allege in writing before the judge what they believe is relevant in the defense of their rights and regarding the opposition of the claims for whose recognition they are petitioning.

ARTICLE 242. At a meeting of the creditors in the place, at the day and time set, the judge shall order the reading of the list of creditors written by the trustee and the circumstances listed in such list.

ARTICLE 243. Once the reading is concluded, the judge shall open debate on each claim, in which debate the current creditors or their representatives, the bankrupt, by himself or his attorney, the intervenors and the trustee may intervene to oppose it.

ARTICLE 244. The owner of an opposed claim or his representative may answer the oppositions made, and the judge may grant to the parties, if he deems it necessary, two new interventions for answer and reply.

ARTICLE 245. In each case, if they have offered proof by official act or by separate petition, they shall be read before the debate opens on each credit.

ARTICLE 246. The judge shall hold as many sessions as are necessary, but in these actions they may not take more than twenty working days, counted from that on which the meeting convened for the first time for such purpose.

ARTICLE 247. Once the examination of the claims in the meeting is concluded, the judge, after the minutes of such meeting are typed, if possible, and the documents presented by the parties are put together, shall conclude the meeting and issue a judgment within three days following the same.

In the judgment, the judge shall divide the claims into three groups:

I. Those that are recognized;

II. Those that are excluded;

III. Those that remain pending for later decision because their situation is not sufficiently clear in the opinion of the judge.

ARTICLE 248. Before a month passes after the first judgment, the judge shall make a decision about those claims included in Section III of the previous article, after requiring the amount of proof to be offered which he deems necessary and admitting those that the interested parties propose.

ARTICLE 249. The intervenors, creditors and the bankrupt may appeal the sentence of the judge.

ARTICLE 250. The appeal may be made to oppose the proceedings, the amount, the class or the priority recognized for the claim of another or oneself.

ARTICLE 251. The appeal of the judgment valuing the claim of another may only be carried out by someone who had intervened as a party who opposed the same claim in the meeting for recognition of claims.

Any creditor may carry out an appeal if it is based upon new facts or facts unknown to him which was not due to any fault of his own at the time of said meeting.

ARTICLE 252. The appeal of the judgment rejecting a claim may only be allowed when the judgment has not recognized the basis, class, priority or amount requested and only for such recognition.

ARTICLE 253. The appeal of the recognition of another's claim places the claim in question, from the point

of view of its participation in the distributions to be made, if sufficient bond is not paid in the situation of claims conditionally recognized.

ARTICLE 254. The judgment rejecting the appeal against the claim of another condemns the appellant to pay legal interest on the amount that the creditor whom he opposed would have received. The calculation shall be made from the date on which the amount should have been placed at the disposition of the creditor up to the date he can legally receive it.

When the owner of an opposed credit has given sufficient bond, once the amount of the claim is paid, instead of interest as referred to in the previous paragraph, he shall be paid the amount of the bond.

ARTICLE 255. When the appeal successfully excludes an opposed claim, the estate shall completely pay the reasonable expenses and costs incurred by the appellant.

ARTICLE 256. The creditor whose claims are excluded shall have his documents returned for any purposes he deems fit.

ARTICLE 257. The creditors whose claims are recognized shall collect their documents with a note at the bottom which makes reference to the judgment of recognition only when, after the judgment is executed, full payment is not made or when such payment is agreed upon in the agreement.

ARTICLE 258. The absence of any of the litigants shall not impede the decision of the judge.

ARTICLE 259. The judgment issued by the judge in the terms of Article 247, if appealed, shall be sustained by whomever has interest in it.

SECOND SECTION

Classification and Priority of Claims

ARTICLE 260. In the judgment recognizing claims, the judge shall establish the class and priority recognized for each claim.

ARTICLE 261. The creditors of the bankrupt shall be classified in the following classes, according to the nature of their claims:

I. Creditors who are exclusively privileged;

II. Creditors with security;

III. Creditors with special privilege;

IV. Common creditors due to business activities;

V. Common creditors based on civil law.

Fiscal creditors shall have the classifications and priorities fixed by tax law.

ARTICLE 262. Exclusively privileged creditors include the following, whose priority shall be determined by the enumerated order:

Appendix

I. Creditors due to burial expenses, if the declaration of bankruptcy takes place after death.

If the bankrupt dies after the declaration of bankruptcy, the funeral expenses shall only be privileged if they were verified by the trustee and do not exceed five hundred pesos;

II. Expenses of illness which have caused the death of the debtor in the case of bankruptcy declared after death;

III. The salaries of personnel of the business and the workers or employees whose services were utilized directly for the year before the bankruptcy.

ARTICLE 263. Secured creditors shall receive their claims from the product of the secured goods to the absolute exclusion of the other creditors and subject to the order determined according to the dates of filing their security.

ARTICLE 264. Creditors who are specially privileged include all those who, according to the Commercial Code or special laws, have a special privilege or a right of removal.

ARTICLE 265. Creditors with special privilege shall collect like secured creditors or according to the date of their claims, if they were not subject to filing or registration, unless several claims arise from the same good or asset, in which case a prorata distribution shall be made without distinction for dates, except where the law states to the contrary.

ARTICLE 266. Creditors based upon commercial transactions shall collect prorata without distinction for dates.

ARTICLE 267. Creditors based upon civil law obligations shall collect in the same manner.

ARTICLE 268. In the bankruptcy of shipping enterprises, in the classification and priority of claims, the rules established in the Commercial Code shall be observed.

ARTICLE 269. The distribution of the product of the assets among the creditors of one class shall not begin until the creditors of a higher class have been paid, according to the priority established for the same.

ARTICLE 270. The following are claims against the estate and shall be paid with priority over any other claims against the bankrupt:

I. Those arising from legal expenses incurred in order to secure the assets of the bankruptcy as well as the preservation and administration of the same;

II. Those arising from judicial or non-judicial proceedings for the common benefit, whenever they have been carried out with due authorization.

ARTICLE 271. With regard to creditors of determined assets or claims with special privilege, a prior privilege may not be claimed, except for expenses of litigation incurred for their defense and expenses necessary for the preservation and sale of the same, and their amount shall be faxed by the judge when they should be paid by the bankruptcy.

ARTICLE 272. In the bankruptcy of general or limited partnerships and, as a result, in the bankruptcy of their general

partners, creditors whose claims arose prior to the formation of the partnership shall be involved in the bankruptcy of the partnership just as those creditors of the partnership, being placed in the class and priority which correspond.

ARTICLE 273. Later individual creditors of said partners shall only have the right to collect on their claims from what remains if there is any remaining after satisfying the debts of the partnership according to these provisions.

TITLE V

The Termination of the Bankruptcy and Rehabilitation

Chapter I

The Termination of the Bankruptcy

FIRST SECTION

Termination through Payment

ARTICLE 274. The judge of the bankruptcy shall issue a judgment declaring the bankruptcy to be concluded if payment according to the bankruptcy or complete payment of the current obligations has been made.

ARTICLE 275. Payment according to the bankruptcy shall be understood to be that made from money of the bankruptcy, according to the percentages established.

ARTICLE 276. Every four months, from the last of the special judgments for recognition of claims, if there were any, the trustee shall present to the judge a statement of the balance of the assets obtained or of cash, and a statement regarding the creditors to be paid.

ARTICLE 277. The judge, after a hearing with the intervenors, shall approve or disapprove the proposed distribution.

Such as it is approved, it shall remain in the court for any interested party to see.

ARTICLE 278. This shall continue in such manner as long as there are assets capable of being distributed; but once this is concluded, the judge shall convene a general meeting of recognized creditors, at which the trustee shall render final accountings.

ARTICLE 279. Before this meeting, and once the saleable assets of the estate are exhausted, the judge shall allow a period of four months to all creditors whose claims are conditional or represented as such to present proof of having complied with the conditions or that they have terminated.

If this is not done, the distribution of the assets affected by such claims shall be carried out.

ARTICLE 280. If at the time when the bankruptcy should be concluded there are still recognized claims pending, due to an appeal of the judgment in which they were

recognized, the conclusion shall be delayed until there is a definitive decision.

ARTICLE 281. If the pending claims are of late creditors, although not recognized, the transpiration of the four months indicated earlier shall give rise to the automatic application of that which the second paragraph of the same article states.

ARTICLE 282. All the assets shall be considered liquidated, even when a part of the same remains, if the trustee shows the judge in a hearing with the intervenors that those remaining lack any economic value or if those remaining are burdened completely by the encumbrances on them.

ARTICLE 283. The judge, after a hearing with the intervenors, shall decide on the use to be made of these assets.

ARTICLE 284. Once the bankruptcy is concluded, the creditors who have not been totally paid shall preserve individually their actions against the bankrupt.

ARTICLE 285. Even after the conclusion of the bankruptcy by payment according to the bankruptcy or due to lack of assets, if other assets of the bankrupt are found or if other assets are returned to him which should form part of the assets of the bankruptcy, the judge shall take the necessary measures for their sale and distribution.

ARTICLE 286. Once the recognition of claims and the penal classification of the bankruptcy is concluded, if the bankrupt pays all creditors who are recognized, with interest

and expenses, and guarantees those which are pending recognition, the judge shall issue a judgment cancelling the registration of the judgment declaring bankruptcy.

Those bankrupts who have been penalized by one of the crimes defined by this law may not enjoy the above benefit, unless it is a crime of culpable bankruptcy, in which case they may have such judgment cancelled.

SECOND SECTION

Termination Due To Lack of Assets

ARTICLE 287. If at any time during the bankruptcy it is shown that the assets are insufficient, even to cover the expenses of the same, the judge, after a hearing with the trustee, intervenors and bankrupt, shall issue a judgment declaring the bankruptcy to be concluded, which shall not preclude penal responsibility from applying.

ARTICLE 288. Creditors may petition for the reopening of the bankruptcy if two years have not passed since its conclusion when they can prove the existence of assets.

The bankruptcy shall continue from the point at which it was interrupted with the trustee and the intervenors continuing in their previously designated functions.

The creditors of the bankrupt, after the judgment concluding the same, may request the recognition of their claims, unless they hid the assets whose existence is proven in order to withdraw them from the responsibility of the bankruptcy.

The conclusion of the bankruptcy or lack of assets shall produce the civil and penal effects of lack of payment according to the bankruptcy.

THIRD SECTION

Conclusion for Failure of Creditors to Attend

ARTICLE 289. If the period set for the presentation of the creditors is concluded and only one of them has attended, the judge, after a hearing with the trustee and the bankrupt, shall issue a decision declaring the bankruptcy concluded; this decision shall produce the effects of annulment.

ARTICLE 290. The creditor shall perfect his rights in the corresponding manner, without the bankrupt being able to require compensation for the damages incurred by the declaration of bankruptcy.

ARTICLE 291. The decision shall be appealable before the same judge, in the period of thirty days thereafter, by other creditors.

FOURTH SECTION

Conclusion by Unanimous Agreement of the Attending Creditors

ARTICLE 292. A bankruptcy shall be declared concluded if the bankrupt proves that the creditors whose claims have been recognized have consented thereto.

ARTICLE 293. Before ordering the conclusion of the bankruptcy, the judge shall have a hearing with the creditors attending who are not recognized and have claims pending and shall make the appropriate decisions.

ARTICLE 294. Even before the period for the presentation of claims passes, the bankruptcy may be concluded if there are no creditors known other than those who consent to its conclusion.

ARTICLE 295. The conclusion of the bankruptcy, according to the previous articles, produces the effect of annulment, but in order to declare it, the judge must have a hearing with the Public Ministry.

FIFTH SECTION

Conclusion of Bankruptcy by Agreement

ARTICLE 296. At any stage of the proceedings, once the recognition of claims is concluded and before the final distribution, the bankrupt and his creditors may enter into any agreements they deem necessary.

ARTICLE 297. The agreements among the creditors and the bankrupt must be made in duly formed meetings of creditors.

Individual agreements between the bankrupt and any of his creditors shall be null; the creditor who makes them shall lose his rights in the bankruptcy, and the bankrupt, by this sole act, shall be classified as culpable when he does not deserve to be considered a fraudulent bankrupt.

ARTICLE 298. In the bankruptcy of general or limited partnerships, any responsible general partner may make proposals for agreement in the absence of those made by the receivers, intervenors or trustee, or in agreement with those made by the latter.

ARTICLE 299. Creditors may make agreements with one or some of such partners for the conclusion of the bankruptcy. The creditors, trustee, and intervenors and the interested partners may present the proposals for agreement.

ARTICLE 300. When dealing with corporations or limited liability companies, the proposals for agreement shall be made by the board of directors or equivalent unit, after legal approval of the proposal by the stockholders.

ARTICLE 301. Commercial joint ventures may not request an agreement.

ARTICLE 302. The intervenors and the trustee may present proposals for the agreement of the bankrupt.

ARTICLE 303. In all cases, the proposal shall be presented to the judge, and in said proposal the percentage which corresponds to the agreeing creditors shall be carefully detailed, along with the guarantees for compliance, periods for payment and requirements needed to carry it out.

ARTICLE 304. The proposal for agreement, in order to be admitted and approved, shall maintain the most absolute equality in the treatment of non-privileged creditors.

The granting of advantages to any creditors shall only be allowed with the express consent of all creditors of the same class who are participating in the bankruptcy and who were not given such advantages.

ARTICLE 305. Once presented with the proposal for agreement, the judge shall order a meeting of the creditors in order to discuss and approve, if appropriate, its admission.

ARTICLE 306. Meetings of creditors or partnerships and of their partners shall be held separately. The corresponding meetings shall be absolutely distinct.

ARTICLE 307. Once the judge has seen the terms of the proposal, he may order the suspension of the activities of sale of assets.

ARTICLE 308. The creditors who are exclusively privileged, those who are privileged and those who are secured may abstain from taking part in the decision of the meeting on the agreement, and, if they do, this shall not harm their respective rights. If, on the contrary, they prefer to have a voice and vote on the proposed agreement, they shall so declare and they shall be included in the delays or reductions agreed to in the meeting, without prejudice to their priority and class.

ARTICLE 309. These same creditors may partially renounce their privilege or intervene and vote in the meeting for the claim to be recognized.

Their participation in the meeting or in the voting without an express showing to the contrary, shall be the same as a total renunciation of their privilege.

ARTICLE 310. In case the agreement is not approved or is annulled, the renunciation by the creditors who have a right to abstain shall be void.

ARTICLE 311. At the meeting for the admission of the agreement, the provisions of Chapter 14 of Title II shall apply, with the following special provisions:

I. The presentation of the proposal of agreement shall be announced by the publication of three notices every five days in a newspaper of major circulation in the place of the declaration of bankruptcy. The last publication shall be made at least five days before the meeting for admission is held;

II. The creditors may agree to the proposal through a written document delivered to the judge;

III. All co-debtors with the bankrupt may attend the meeting and be heard, as well as those who guarantee compliance with the agreement.

ARTICLE 312. Once the meeting has begun, the trustee shall inform everyone about the proposed agreements. Those in attendance may request as much clarification as they deem necessary.

ARTICLE 313. If there is only one proposal for agreement, it shall be discussed and placed for a vote.

ARTICLE 314. If there are several proposals, the judge shall attempt to have their authors unify them into one proposal and, if they accept, shall suspend the meeting up to five days for them to prepare the common proposal.

ARTICLE 315. If they do not accept the attempt to unify the proposals, or, if they do but cannot present the agreed text on the day agreed on, the judge shall place several proposals for discussion, beginning with those which, in his mind, are the most favorable to the creditors.

Afterward, he shall put them up for a vote and he shall consider as the accepted text the one which receives the relative majority of votes. For such purpose, as many votes as are necessary shall be held.

ARTICLE 316. Only the proposal for agreement presented by the creditors or determined by the judge, according to the previous article, shall be submitted to a final vote and required to receive the majority, which is determined in the following articles, according to the cases, so that the judge admits it and proceeds toward activities for judicial approval.

ARTICLE 317. If the agreement proposes payment in cash, there may not be a reduction greater than 65 percent of the claims and it shall have to have the following majorities:

I. Seventy-five percent of the amount of the claims, if the amount offered is equal to or greater than thirty-five without reaching forty-five percent;

II. Sixty-five percent of the amount of the claims if the amount offered is from forty-five to fifty-five percent;

III. An absolute majority of the amount of the claims, if the amount offered is equal to or greater than sixty-five percent.

For a valid decision of the meeting, an absolute majority of the creditors must attend and a third of such has to vote in favor of the agreement.

ARTICLE 318. If, besides a reduction, the agreement proposes a delay, this may not be greater than two years, nor the reduction more than fifty-five percent.

The majorities of persons required for the admission of the agreement shall be the same as in the previous article.

The majorities of capital for the admission of the proposal shall be:

I. Seventy-five percent of the amount of the claims if the amount offered is equal to or greater than forty-five percent without reaching sixty-five percent;

II. Sixty-five percent of the amount of the claims if the amount offered is sixty-five percent to seventy-five percent;

III. An absolute majority of the amount of the claims if the amount offered is equal to or greater than seventy-five percent.

ARTICLE 319. In the case set forth in the previous article, the maximum period of extension and the minimum amount offered shall be in the following relationship:

I. Forty-five to sixty percent of the amount offered, if the extension is not more than six months;

II. Sixty to seventy percent of the amount offered, if no more than a one-year delay is proposed;

III. Seventy percent and above, if the extension is up to two years.

ARTICLE 320. If a fixed extension is requested and an amount is offered which, according to the previous article, is a longer extension, the majority of capital allowed for admission of the proposal for agreement shall be that corresponding to the amount offered according to Article 318.

ARTICLE 321. The agreement may consist of the transfer of the individual, partnership or corporate business of the bankrupt to the latter if it is not in liquidation so that, with the product of the activity of such business, the bankrupt can make payment on the claims.

This agreement may be admitted by the majority of persons required for the agreement with cash payment, with a reduction of less than seventy-five percent of the claims, as long as the votes in favor represent the majority of the amount of the claims.

ARTICLE 322. The agreement which only means an extension and not a reduction shall be admitted if the majority set forth in the previous article votes in favor of it.

In this case an extension of up to three years shall be admissible.

ARTICLE 323. The bankrupt may offer to abandon his assets to the creditors.

The acceptance of this agreement requires the presence at the meeting of the majority of creditors and a favorable vote by two-thirds of those present, who must also represent three-fourths of the amounts of the claims.

ARTICLE 324. For the computation of the majorities of creditors and of capital required in the previous articles, the following rules shall apply:

I. The majority in attendance shall be all those creditors present, although they abstain from voting.

The judge shall assure that, to measure the creditors entering the place where the meeting is to be held, their presence is documented on special lists prepared beforehand;

II. The majority of voters shall be counted using as a base the number of creditors that have voted, and establishing their proportion to the number of creditors listed as present according to the previous rule;

III. The majority of capital refers to the amount of the claims, represented by favorable votes, in relation to the total amount of the claims with a deduction of the amount of the claims of the creditors with the right to abstain who have used such right.

ARTICLE 325. The persons included in Sections I and II of Article 30 of this law may not vote on the agreement and the amount of their claims shall be deducted also for the computation of the amount of claims, according to the previous article.

ARTICLE 326. Claims incurred by inter vivos acts shall also not have the right to vote and the amount thereof shall be deducted for the computation of the majorities of capital, although they were endorsed after the date on which the judgment for declaration of bankruptcy was issued.

ARTICLE 327. If, during the discussion of the proposal for agreement, the proposal is modified, the votes given in writing shall not be used in favor of the modification unless this is an improvement over the previous proposal.

The judge shall decide on this matter.

ARTICLE 328. In the case of a proposal for agreement made by the trustee or intervenors, upon concluding the meeting and once the text of the agreement is written up, or when the proposal by the bankrupt is modified, there shall be a period of two days for him to show where he accepts or rejects it.

If he rejects it, the judge shall indicate that the bankruptcy shall be proceeded with.

ARTICLE 329. When dealing with an agreement offered to a partnership in bankruptcy, the acceptance or rejection referred to in the previous article shall be given, when dealing

with general or limited partnerships, by the partners who either before or after the bankruptcy have been authorized to represent the partnership in the bankruptcy, and not by the majority of the partners according to the General Law of Mercantile Companies.

ARTICLE 330. In other commercial companies, the approval or rejection of the proposed agreement shall be given by the managers, directors or liquidators, who shall make such decision according to their bylaws and, in their absence, according to the law on commercial companies.

ARTICLE 331. The minutes of the meeting shall contain all the circumstances of the same, shall reproduce literally the terms of the agreement admitted and shall express: the guarantees given, the number of creditors who voted for and against and those who agree, the amount of their claims and the reasons given by those who voted against it.

They shall be signed by the intervenors and the creditors in attendance, as well as the judge and the secretary. The authorizations of the creditors who have not intervened personally, as well as those agreeing, shall be attached.

ARTICLE 332. If the majorities legally required are not obtained, the judge shall set a period for the reception of agreements in writing and shall make it known to the creditors in the manner for notification and publication of judgments for the declaration of bankruptcy.

Once the period has passed, and the majorities are obtained or not, the judge shall include that in the minutes and shall take the necessary measures according to the case.

ARTICLE 333. The modifications in the number of creditors or the amount of their claims, by virtue of a judgment after the voting, shall not influence the validity of the judgment, but the judge shall take them into account upon issuing the judgment of approval.

ARTICLE 334. Within the fifteen days following the meeting in which an agreement was admitted, or following the conclusion of the period established for the reception of written agreements, the judge shall determine the date on which the hearing shall be held for the approval of the same.

ARTICLE 335. From the day of the admission of the agreement by the creditors until the day before that set for the trial of approval, the indicated creditors in the previous article and other interested creditors in the bankruptcy may present in writing any observations they deem relevant against the agreement admitted.

ARTICLE 336. The hearing shall be held within twenty-five days after the admission of the agreement.

ARTICLE 337. The judge shall examine the proposal for agreement and, if all applicable legal rules have been complied with, he shall conduct a hearing with the creditors or interested parties who so request, and shall decide whether the amount offered is beyond the possibilities of the debtor, as well as whether the given guarantees of compliance are sufficient.

ARTICLE 338. The judgment that is issued, approving or disapproving the agreement, shall be published in the manner set forth for the declaration.

ARTICLE 339. The judgment of approval may only be appealed by the dissident creditors and by those who did not attend, if they prove that it was through no fault of their own that they did not receive timely notification.

ARTICLE 340. Any creditor and the trustee may request the annulment of the agreement, although the periods for appeal have passed, based upon the following reasons:

I. Defects in the procedures set for the notification, celebration and deliberation of the meeting of the creditors;

II. The failure of the appearance or representation of any of the voters, whenever their vote decides the majority in number or quantity;

III. Fraudulent information between the debtor and one or more creditors or among the creditors, causing them to vote for the agreement;

IV. Fraudulent exaggeration of claims to achieve the majority of amount;

V. Fraudulent error in the general balance sheet of the business of the bankrupt or in the information of the trustee to facilitate the admission of the proposals of the debtor.

ARTICLE 341. The opposing creditor who is trying to annul the agreement, according to the previous article, shall prove that he did not know the reasons that the latter alleges as a basis for his opposition.

ARTICLE 342. The special recourse of nullity may only be interposed within three months following the date of the executory sentence of approval of the agreement and shall be substantiated in writing.

ARTICLE 343. The judgment or disapproval may be appealed by the bankrupt, by the intervenors and by any creditor who voted in favor of the agreement.

ARTICLE 344. If the appeal against the judgment of approval of the agreement is successful, the bankruptcy shall continue if the appeals court does not allow a new meeting of creditors to be held for the discussion of proposals for agreement that are made.

ARTICLE 345. If the appeal against the judgment of disapproval is successful, the court may grant the approval denied by the inferior court or order, in the appropriate case a new meeting to be held.

ARTICLE 346. The special recourse of nullity shall produce the effects of an appeal against approval of the agreement.

ARTICLE 347. Once the judgment of approval is signed, the bankruptcy shall be concluded and the functions of the organs of the same shall cease.

ARTICLE 348. The debtor shall be placed in possession of all the assets that make up the estate, taking over full capacity of ownership and administration.

ARTICLE 349. In the agreement, it may be required that the trustee, a member of the intervenors or another person be the one who takes charge of the assets of the estate until the debtor complies with the obligations he assumes in the agreement.

ARTICLE 350. It may also be agreed that the trustee, the member of the intervenors or the person designated limit their intervention to making note of the entries and deletions from the safe of the debtor, to which they shall have a master key. It shall also be their duty to prevent the debtor from taking out of his business funds a larger amount than that assigned to him for special expenses or from taking any funds for items which are not part of the business; but they may not intervene in the order and direction of the business of the debtor, over which the latter shall be in charge and shall proceed in the manner he deems most convenient.

ARTICLE 351. The trustee, where necessary, shall request the judge to authorize, and the judge shall grant such authorization as soon as the agreement is signed, in compliance with Article 347, delivery to the debtor, through an inventory of all assets, effects, books and papers which correspond.

ARTICLE 352. All legal acts and activities which, as a consequence of the bankruptcy, have been declared ineffective with regard to the estate, shall have full effect against the debtor who made the agreement.

ARTICLE 353. The debtor shall regain his capacity to sue and may sue and be sued, except for, in this respect, the limitations imposed on the creditors due to the agreement.

ARTICLE 354. The estate shall be substituted by the debtor in the exercise of rights and in compliance with the obligations of the former.

ARTICLE 355. The trustee must account for his business to the judge and such accountings shall be approved or disapproved after a hearing with the debtor. The decision issued may be appealed.

ARTICLE 356. Due to the agreement and with no express writing to the contrary, the claims shall be extinguished as to the part which was returned to the bankrupt, even when there is an amount remaining in excess from the assets of the bankruptcy or if he later has better fortune.

ARTICLE 357. In the case of having had an express agreement to which the previous article referred, the creditors who were not completely satisfied by what they received from the bankruptcy and the debtor, according to the agreement, shall preserve their cause of action for what remains owed to them against the assets later acquired by the debtor.

ARTICLE 358. The extinction of claims due to the agreement is absolute and there shall not remain for the amount of the same any obligation in any class nor shall it be possible to receive them through a civil action for damages or in the penal proceeding for the qualification of the bankruptcy.

ARTICLE 359. Judicial approval of the agreement obligates, according to the terms of the same, the bankrupt

and all creditors who took part in it, whether or not privileged, approving or disapproving.

ARTICLE 360. Common creditors before the declaration of bankruptcy, who do not attend, although they are not included in the balance sheet and have not taken part in the proceedings, and although their claims were pending recognition, are equally obligated by the agreement.

ARTICLE 361. The making of an agreement is not an obstacle to the initiation or continuation of a penal action.

ARTICLE 362. Partners who make a personal agreement shall limit their responsibility to the creditors of the partnership, but they may not request the benefit of cancellation of the registration of their bankruptcy nor that of rehabilitation except when the partnership has complied with the conditions of payment agreed upon by its creditors or those that legally are required in order to enjoy such benefits.

ARTICLE 363. The agreement produces full effects on the partner and attending creditors but only private assets of the partner are included in the same without being able to deliver any asset of the estate of the bankruptcy to satisfy the obligations of the agreement.

The agreement between the partnership and its creditors does not change the situation of the general partners.

ARTICLE 364. When the enterprise is transferred in order to use its product to pay the claims, it shall be managed

according to the conditions set by the agreement, in the name of the person or persons indicated.

The agreement shall determine if the debtor or the partners have to cooperate and the conditions of the management of the enterprise.

ARTICLE 365. Once the payments proposed in the agreement are made, the business shall return to the owner unless otherwise indicated.

ARTICLE 366. The continuation of the business may be agreed upon without a change of owner.

ARTICLE 367. The effects of the agreement regarding the temporary or permanent transfer of the business of the bankrupt shall be determined in each case according to its contents.

ARTICLE 368. The agreement made on the basis of the transfer of all assets of the estate frees the debtor completely with the assets remaining in the care of the attending creditors, who shall proceed with their liquidation or distribution in the manner necessary.

ARTICLE 369. If the debtor in agreement fails to comply with that stipulated, at the request of his creditors the judge shall order the appearance of the bankrupt and, hearing the parties, shall issue a decision rescinding or confirming the agreement.

The decision shall be appealable without delaying execution of the decision.

ARTICLE 370. If non-compliance is due to actions or omissions guaranteed in the agreement, the judge shall also notify the guarantors and hear them.

ARTICLE 371. The rescission of the agreement shall determine the reopening of the bankruptcy.

The judge shall set forth the necessary steps to be taken in the same decision.

ARTICLE 372. The reopening of the bankruptcy by rescission of the agreement produces all the effects of the declaration of bankruptcy.

ARTICLE 373. Later and earlier creditors to the agreement who wish to exercise their rights against the estate shall request recognition of their claims.

ARTICLE 374. The following may not request recognition of their claims:

I. The creditors of the old bankruptcy who have completely received the percentages established in the agreement;

II. The privileged creditors and those of the estate who continue preserving their class and priority, in the case of not having been satisfied from the old estate;

III. The previous creditors to the agreement who did not have the right to participate in it or were excluded.

ARTICLE 375. Creditors prior to the agreement may request recognition of their claims for the amount that was

recognized in the prior estate, with a deduction for the amounts they have received as payment except where they have been completely paid.

ARTICLE 376. If a creditor had been paid during the agreement, he may not request recognition of any claim if his percentage has been completely paid.

The guarantor may request recognition of his claim for the amount paid.

ARTICLE 377. If payment were partial, the creditor may request recognition of his entire claim, but he may only collect the remainder and the guarantor shall act according to that set forth earlier about individual obligations.

ARTICLE 378. If the person who paid the entire claim of a creditor is one who is co-obligated or a guarantor of the bankrupt, he may request recognition of his entire claim.

If the payment were only partial, it shall be handled with regard to the creditor, as stated earlier, and the person co-obligated or the guarantor may request recognition of the claim for the amount paid reduced by the amount agreed to be paid.

ARTICLE 379. Former creditors shall be considered as privileged over the real guarantees contained in the agreement for the amount of the payments recognized in the same; for the rest of the claim, whose recognition is requested in the new bankruptcy, it shall only be considered as a common claim.

Appendix

Chapter II

Rehabilitation

ARTICLE 380. The judge who has handled the proceedings in the bankruptcy may grant rehabilitation to the bankrupt under the conditions expressed in the following articles.

ARTICLE 381. Bankrupts declared accidental shall be rehabilitated as long as they swear in a legal manner to pay their unpaid debts as soon as they can.

Debts extinguished according to the provisions of the previous articles shall not be deemed unpaid.

ARTICLE 382. Bankrupts declared culpable shall be rehabilitated if they have completely paid their creditors, as soon as they pay the fine imposed on them, and, if they have not made complete payment, after three years from compliance with the imposed fine have passed.

ARTICLE 383. Fraudulent bankrupts may only be rehabilitated if they have completely paid their debts and after three years from compliance with the imposed penalty have passed.

ARTICLE 384. Bankrupts whose bankruptcies have been extinguished by an agreement with their creditors may be rehabilitated if they prove complete compliance with the same and, in that case, after they have complied with the penalty imposed on them.

ARTICLE 385. Complete payment alluded to in the previous articles refers to that made with the estate of the bankruptcy or through later payments.

ARTICLE 386. The petition for rehabilitation shall be presented before the judge who handled the bankruptcy along with as many documents as are necessary to prove that the requirements established by law are met.

ARTICLE 387. Part of the petition shall be published, at the cost of the interested party, in the form established for publishing the judgment of declaration of bankruptcy and the requirement shall be made to those who must oppose it to allege in the period of one month what is their right so to do.

ARTICLE 388. If within said period no creditor claiming a right comes forward due to non-compliance with the agreement or for not having a claim paid, the judge shall order a hearing to be held within eight days from the end of said period, in which he shall hear the petitioner and the Public Ministry.

ARTICLE 389. In the same manner and period, a hearing shall be held if there is opposition, reading the claims made in writing and hearing the interested parties who appear.

ARTICLE 390. Within two days following the hearing, the judgment granting or denying rehabilitation shall be issued. In the first case, it shall state that the judgment be registered and published at the cost of the party rehabilitated, in the same form as the judgment of declaration.

ARTICLE 391. The judgment which grants or denies rehabilitation shall be appealable without execution of the judgment being suspended.

ARTICLE 392. With the rehabilitation of the bankrupt, all legal actions produced by the declaration of the bankruptcy shall cease.

ARTICLE 393. A petition for rehabilitation may not be admitted without a copy of the decision issued in the penal proceeding being presented too, unless such proceeding was not initiated because the bankruptcy was known to be accidental. Also required with a petition for rehabilitation are documents which prove, in each case, compliance with the penalty imposed, the agreement or complete payment.

TITLE VI

Prevention of Bankruptcy

Sole Chapter

Suspension of Payments and Preventive Agreement

FIRST SECTION

Assumptions About Suspension of Payments

ARTICLE 394. All merchants, before declaring bankruptcy, may request that they be declared in suspension of payments and that a meeting of their creditors be held to make a general preventive agreement.

ARTICLE 395. The merchant who requests to be declared in suspension of payments should present his demand before a competent judge along with the documents, information and requirements needed for a declaration of bankruptcy.

ARTICLE 396. The following may not request to be declared in suspension of payments, and if they do, the judge shall proceed to declare them in bankruptcy:

I. Those who have been punished for crimes against property or of misrepresentation;

II. Those who have not complied with obligations contracted for in previous preventive agreements;

III. Those who, having been declared in bankruptcy, have not been rehabilitated unless the bankruptcy ended due to lack of attendance of creditors or to unanimous agreement of them;

IV. Those who do not present the documents required by law. The judge may grant a maximum period of three days for such documents to be presented or completed;

V. Those who present their petition after three days have passed since the cessation of payments began;

VI. Those which are commercial joint ventures.

ARTICLE 397. Joint ventures may not use the benefit of suspension of payments.

Appendix

SECOND SECTION

The Proposal for a Preventive Agreement

ARTICLE 398. An essential requirement is always that the petition be accompanied by a proposal for a preventive agreement that the merchant makes to his creditors.

ARTICLE 399. The presentation of a petition for a declaration of suspension of payments shall stop the filing of petitions which are being presented for a declaration of bankruptcy.

If the documents legally required are not presented, the cessation referred to hereinabove shall not occur until the moment in which the complete documentation in the form determined by the law is presented.

ARTICLE 400. The proposal for a preventive agreement should contain the requirements set forth in this law for the bankruptcy agreement, but if due to the urgency of the case the previous consent of the partners is not possible to obtain, it may be obtained afterward.

ARTICLE 401. If the proposal for the preventive agreement does not contain the conditions required by law, the judge shall grant a period of three days to cure such defects and if these days pass without such cure, the judge shall declare bankruptcy.

ARTICLE 402. When the previous consent of the partners is not obtained, the period to obtain it shall be up to

three days, but, meanwhile, the petition shall only have the effects set forth for the petition that is not accompanied by the legally required documents.

ARTICLE 403. The proposal for a preventive agreement may have as its purpose: reduction, delay or both, with that set forth for the agreement in bankruptcy being applicable; however, the percentage which the suspension offers to pay to the creditors has to be five percent greater in each case than the minimum percentages that may be proposed in the agreement in bankruptcy.

THIRD SECTION

Judgment of Suspension of Payments

ARTICLE 404. The judge, the same day, or at the latest, the day after the presentation of the petition, shall issue a judgment declaring a suspension of payments, once he has verified that the petition and proposal of the agreement contain the legal conditions, except for that set forth in Article 396, Section IV, and Article 401.

ARTICLE 405. The judgment of declaration of suspension of payments shall contain: the name of the trustee of the suspension, the order which permits him to carry out his duties and the orders of notification of creditors, the order calling the meeting of creditors, the order of registration of the judgment and the orders sending the copies indicated in the judgment for declaration of bankruptcy.

ARTICLE 406. For the notification, publication and opposition to the judgment, that set forth in the third chapter of Title I of this law shall be applicable.

FOURTH SECTION

Recognition of Claims

ARTICLE 407. The meeting of creditors for recognition of claims shall be held according to that set forth in the procedure for bankruptcy.

FIFTH SECTION

Effects of the Declaration of Suspension of Payments

ARTICLE 408. While the proceeding is in progress, no claim made beforehand may be required from the debtor nor may he pay it, and the statute of limitations shall not run, in the suits referred to in the following article.

Nevertheless, the protests which correspond according to law may be raised.

ARTICLE 409. With the exception of claims for debts for work or food, or claims with guarantees, all suits against the debtor that have as their purpose claiming compliance with a monetary obligation shall be in suspension; but actions may be maintained to prevent damage to things subject to litigation or to preserve the rights of the parties.

ARTICLE 410. During the proceedings the debtor preserves the administration of assets and shall continue the ordinary operations of his business under the care of the trustee.

ARTICLE 411. The following shall be ineffective as against the creditors: the granting of security interests, gifts and, in general, all which exceed the ordinary administration of the business. The judge, upon a hearing with the party in suspension of payments, may authorize these acts in cases of necessity or obvious emergency. If the merchant carries out any of these activities prohibited by the article, the judge, upon a hearing with the trustee and interested parties, may declare a state of bankruptcy.

The same sanction shall apply when it appears that the merchant has fraudulently hidden part of his assets, omitted a creditor, listed non-existent claims or performed any other fraudulent act to the damage of the creditors.

ARTICLE 412. For the sole purpose of the agreement, the claims against the debtor shall be extinguished.

ARTICLE 413. The conditional term and installment claims shall be ruled by that set forth for bankruptcy.

SIXTH SECTION

Organs of the Suspension of Payments

ARTICLE 414. The judge shall have the powers conferred in Chapter I of Title II of the law, in the manner in

which they are compatible with the special nature of the suspension of payments.

ARTICLE 415. The naming of the trustee shall be made in the manner indicated in the bankruptcy.

ARTICLE 416. The trustee shall have the following rights and obligations:

I. To make an inventory, to verify and, in the appropriate case, to correct, in a term not to exceed fifteen days, the exact status of the assets and liabilities of the merchant, as well as the information listed in Article 6, Section C;

II. To take over the cash register, watch the accounts and all operations carried out by the merchant, and oppose the performance of any act that may damage the creditors. In case of the non-conformity of the merchant, the judge shall resolve it immediately;

III. To communicate to the judge any irregularity he sees in the business of the debtor;

IV. To make a report on the state of the business that includes all information that may enlighten the creditors to the proposed agreement and on the conduct of the debtor. This report shall be presented before the judge at least three days before the celebration of the meeting so that interested parties may be informed about it.

In general he has the rights and obligations of the trustee of the bankruptcy.

ARTICLE 417. Creditors may require the designation of an intervenor who shall watch over all operations of the trustee and the party in suspension of payments.

SEVENTH SECTION

Admission of the Agreement by the Creditors

ARTICLE 418. With respect to the convening of the meeting for admission of the agreement and the creditors with the right to abstain, computation of votes and the majority needed for the admission of the proposal shall be governed by that set forth in this law on the agreement in bankruptcy.

ARTICLE 419. If the agreement is rejected expressly or the majorities required are not obtained, the judge shall proceed with the declaration of bankruptcy.

EIGHTH SECTION

Judicial Approval of the Agreement, Effects, Appeal and Opposition

ARTICLE 420. Once the agreement is admitted, the judge shall also grant his approval if the following requirements are met:

I. That the merchant is not included in the cases set forth in Article 396;

II. That the amount offered is not less than the possibilities of the debtor;

III. That the execution of the agreement is sufficiently guaranteed.

If the judge does not approve the agreement, he shall officially declare bankruptcy.

ARTICLE 421. The judgment approving or disapproving the agreement shall be published in the same manner as the declaration of bankruptcy.

ARTICLE 422. The judgment may be appealed or opposed in the manner established for the approval or disapproval of the agreement in bankruptcy.

ARTICLE 423. The approval of the agreement in the suspension of payments produces the same effects as those in the agreement in bankruptcy.

ARTICLE 424. The trustee shall continue to carry out his duties during the entire time set for the execution of the agreement, for the purpose of watching the conduct of the debtor, the formation and maintenance of the guarantees, the payment of the installments on the agreed dates and the legal observance of all stipulations in the agreement, in order to communicate to the judge any irregularity seen.

For these purposes, the trustee has the right to examine the books of the merchant and to provide for the formation of the promised guarantees at the cost of the merchant.

ARTICLE 425. The judge shall regulate the fees of the trustee and of the intervenors, according to that set forth in

Articles 57 and 70, respectively, taking into account the services rendered and the importance of the business.

ARTICLE 426. In cases where the judgment of approval or disapproval of the preventive agreement is appealed or opposed, the judgment of the appeals court shall determine if they should proceed to bankruptcy.

ARTICLE 427. The declaration of suspension of payments is the same as that of bankruptcy for the exercise of the penal actions of classification.

However, the declaration of fraud made by a criminal judge has no effect on the suspension of payments for its conversion to bankruptcy unless the judge handling it recognizes the commission of fraudulent acts.

ARTICLE 428. At any time before the convening of the meeting for recognition of claims, the judge may declare the proceeding of suspension of payments concluded if the debtor shows his capability to resume compliance with his obligations. The judge shall have a hearing with the trustee and intervenors to so determine.

In this case, the debtor may not again request the benefit of suspension of payments for the period of one year after the date on which he previously received such benefit.

ARTICLE 429. In all that is not set forth expressly for the suspension of payments and preventive agreement, the rules of bankruptcy and the agreement for the same shall apply as long as they do not contradict the essence and character of the suspension of payments.

Appendix

TITLE VII

Special Bankruptcies and Suspensions of Payment

Chapter I

Bankruptcies and Suspensions of Payments for Credit Institutions

FIRST SECTION

Bankruptcy

ARTICLE 430. Institutions of credit and auxiliary institutions which have special privileges, shall be declared in bankruptcy according to that set forth in this law and on the petition of the National Banking Commission.

When institutions declared in bankruptcy operate different departments, in the terms required by the General Law of Credit Institutions, the declaration of bankruptcy shall affect all departments at the same time except for that set forth in Article 440.

ARTICLE 431. The judgment for declaration of bankruptcy shall be communicated to the National Banking Commission, which shall be previously summoned and heard according to the terms of this law.

ARTICLE 432. The trustee shall be named by the judge from the lists of credit institutions made by the National

Banking Commission, which shall publish such lists before the end of January in the Diario Oficial of the Federation.

ARTICLE 433. If the declaration of bankruptcy is pronounced during the suspension of payments, the trustee designated for that shall continue.

ARTICLE 434. The National Banking Commission has the right to propose, with cause, the removal of the trustee.

ARTICLE 435. The extinguishment or expiration of claims against the debtor, as well as the judicial decisions in the proceedings in which the bankrupt took part, shall be in suspension from the date of the declaration until the trustee takes possession.

ARTICLE 436. Proposals for agreement, once admitted in the creditors' meeting, shall be submitted to the decision of the National Banking Commission.

The judge shall issue a judgment on the agreement based on the previous decision.

For these purposes the judge shall send the agreement to the National Banking Commission within the twenty-four hour period following its admission and the Commission shall make its decision in the unextendable period of seven days.

ARTICLE 437. The project of classification is subject to the following order:

Appendix

I. Assets excluded from the estate;

II. Creditors of the estate:

a) Tax claims for current taxes;

b) Creditors of the estate; and

c) General expenses of the liquidation and fees of the liquidators;

III. Creditors with claims with real guarantees, to which the product of the encumbered assets can be applied, including the general indebtedness with special security in which the security will pay for it;

IV. Creditors of the bankrupt who are exclusively privileged:

a) Tax claims due to taxes other than those indicated in Clause (a) of Section II; and

b) Labor claims.

V. Privileged creditors to which shall apply, preferentially, in the following order, the product of the assets of the bankrupt, once the claims referred to in the previous sections have been paid:

a) Creditors due to deposits of savings, with preference over the assets that form the assets of the corresponding department and over the other assets, claims and securities

that do not constitute collection of general payments either commercial or secured, or mathematical reserves of the contracts of capitalization, when the institution that handles savings accounts also handles deposit activities, financing, both secured and for capitalization;

b) Creditors of deposit banks for immediate deposits and term deposits, including the representatives in payments in cash, and the checks expedited by such banks;

c) Creditors of general payments, commercial or secured, to which apply in the first term, securities and rights;

VI. Common creditors, including fiscal claims that do not proceed as taxes.

In the project of classification, the following are included in the place and for the amount which correspond to them, according to the request formed: the claims against the bankrupt which were in litigation during the final resolution.

SECOND SECTION

Suspension of Payments

ARTICLE 438. The credit institutions may request to be declared in suspension of payments under the conditions of this law, but if the circumstances are urgent or if the institution requesting such declaration has various branches and therefore cannot produce the documents required by law, a copy of the last monthly balance sheet approved by the National Banking Commission shall accompany the request,

with the obligation to present, within the twenty following days, the required documents.

ARTICLE 439. The judgment of declaration of suspension of payments shall be communicated to the National Banking Commission.

ARTICLE 440. When the institution which suspends its payments according to the terms of this chapter operates two or more departments, according to that set forth in the General Law of Credit Institutions, the suspension of payments shall be extended to all the departments, unless, in the judgment of the trustee, the assets encumbered in one of said departments are sufficient to cover the corresponding liabilities, and they are sufficient to handle the normal obligations of the department: in which case, the judge may authorize the debtor, with the intervention of the trustee, to proceed to sell or collect, in each case, the assets, claims or rights which are especially encumbered by the obligations of the department in question, and to pay these obligations according to the terms and conditions which had been formed.

ARTICLE 441. Everything set forth in this law shall apply to the agreement of suspension.

In the same judgment, the judge may disapprove of the agreement and proceed to declare bankruptcy.

ARTICLE 442. The National Banking Commission may oppose the agreement approved by the judgment, through the special recourse of annulment.

Appendix

Chapter II

Bankruptcy and Suspension of Payments in Insurance Companies

ARTICLE 443. In the bankruptcy or suspension of payments of an insurance company, the Ministry of the Treasury and Public Credit shall have the same powers as, according to the previous articles, the National Banking Commission has with regard to credit institutions.

ARTICLE 444. The experts who are necessary for the administration, liquidation or any other operations in the bankruptcy or suspension of payments of an insurance company shall be named by the judge on the proposal of the trustee, but the latter should be taken from the lists provided by the Ministry of the Treasury and Public Credit.

ARTICLE 445. The trustee shall have the powers that are set forth in the General Law of Insurance Companies on the powers of liquidators.

ARTICLE 446. Those insured shall have the classification of creditors with special privilege and they shall collect preferentially over all other creditors of the same class.

ARTICLE 447. The Ministry of the Treasury shall give preference to national insurance companies to act as trustees.

ARTICLE 448. Once the bankruptcy of an insurance company is judicially declared, it may not proceed to administrative liquidation unless the Ministry of the

Treasury, within one working day following notification, decides to proceed with such liquidation.

The Ministry of the Treasury, in cases where it can request the declaration of bankruptcy, must decide either to proceed with the administrative liquidation of the company or to request a declaration of bankruptcy.

ARTICLE 449. The decision, legally made by the Ministry or the Treasury, to proceed with administrative liquidation of an insurance company, shall stop the declaration of bankruptcy.

Chapter III

Bankruptcy and Suspension of Payments of Public Service Enterprises

ARTICLE 450. Enterprises with individual or governmental ownership which render a public service which is either federal, state or municipal, may be declared in bankruptcy or in suspension of payments, but in no judicial action or administrative action may the service that they render be interrupted.

ARTICLE 451. Two members of the intervenors shall be designated by the public entity that depends on the service rendered.

ARTICLE 452. Once the declaration of bankruptcy or suspension of payments is made, if the service should continue being rendered by the bankrupt institution and if

an agreement is not approved, an attachment council shall be formed, composed of a president designated by the government or corporation which had granted the service, a member of the governing body of the institution, a member of the personnel of the institution and two creditors.

From the moment of its formation, the intervenor shall cease to function.

ARTICLE 453. The attachment council shall reorganize the rendition of service and shall administer and use the enterprise as if an agreement had been reached based upon the transfer of the enterprise to pay its creditors with its products.

ARTICLE 454. The judge, upon a hearing with the attachment council and the trustee, shall issue a judgment regulating the terms of the indicated forced agreement.

Chapter IV

The Bankruptcy and Suspension of Payments of Financial Institutions

ARTICLE 455. That set forth in Articles 443, 444, 448 and 449 of the present law shall be applicable in the following chapter, to the bankruptcy and suspension of payments of financial institutions.

ARTICLE 456. The trustee, upon forming the classification, shall take into account that set forth with respect to the Law of Financial Institutions.

Appendix

TITLE VIII

Recourses and Issues in Bankruptcy and Suspension of Payments Proceedings

Chapter I

Recourses

ARTICLE 457. Against decisions and judgments which, according to this law, do not allow appeal, exists the recourse of annulment. This recourse should be submitted the day following that on which the respective notification takes effect and shall be substantiated with a transcript within twenty-four hours to the opposing party. The decision shall be issued within the third day following the conclusion of the notification.

ARTICLE 458. The appeal is allowed in the cases determined by this law, with the effects that the law sets forth, and with execution not being suspended if the law does not say anything, unless it involves the judgment of classification or decisions which fix an end to the proceedings or make their continuation impossible, in which case the recourse shall proceed with both effects.

ARTICLE 459. The appeal shall be submitted within three days following that on which notification was made or the last publication is made of the respective decision.

ARTICLE 460. Once the appeal is admitted without execution being suspended, in the same decision admitting

it a term of three days shall be set for the appellant to set forth the facts which shall be included in the respective testimony and, if this period passes without such petition being made, the decision being appealed shall become final.

To such testimony the facts that the other parties set forth shall be added. Such facts set forth by the other parties must be done within the same time period. The judge may also request those facts which he deems necessary.

ARTICLE 461. Upon admitting the recourse, the parties shall be notified to appear before the superior court.

ARTICLE 462. In the decree admitting the appeal with both effects, the transfer of the original file to the appeals court shall be ordered, summoning the parties for the same purpose.

ARTICLE 463. Within the three days following the arrival of the decrees or testimony, in the respective case, the court, without further proceedings, shall decide on the admission of the recourse and the classification and shall return the decrees to the trial court if it deems the appeal inadmissible or it shall proceed as is necessary if it revokes the classification.

ARTICLE 464. In the decree that declares the recourse admissible the appellant shall be prevented from expressing the damages within the five days following its notification. The documents which contain them shall be given, for an equal period, to the other parties.

ARTICLE 465. The failure to express damages shall cause the termination of the recourse, which the court shall declare without petition from any other party.

ARTICLE 466. In the documents of petition for and answers to damages, the parties should offer proof, expressing the points on which they should argue, as long as they are not irrelevant to the issue in question.

Within the third day the court shall resolve the question of the admissibility of the proof, opening, in the appropriate case, a period that never exceeds fifteen days.

ARTICLE 467. While the period for pleading is continuing, it is admissible, at the appeal level, to offer proof of confession.

In the case of an implied confession, the presumption which is produced shall be examined carefully against the documents and facts of the decrees.

ARTICLE 468. Once the damages are answered, if not through proof, or once the period for this is finished, the decrees shall be placed for review by all parties for five common days to plead and, once these are over, the period of eight days in which the judgment should be issued shall begin to run, without any need for notification.

Appendix

Chapter II

Issues

ARTICLE 469. For the recognition of and decision on various questions which may arise during the bankruptcy and suspension of payments proceedings, the following activities shall be observed:

I. From the initial documents of the proceeding on the issue, there shall be a period of five days for notification of the party or parties interested in the issue. A party who does not answer the notification shall be considered as having confessed, except on proof to the contrary;

II. In the documents answering the petition on an issue, and in the petition, the parties shall offer proof expressing the points on which they should argue and which are relevant to the issue set forth.

Within the third day following the conclusion of that period, the judge shall decide on the admission of the proof and shall open, in each case, a period therefor which shall never exceed fifteen days;

III. Once the period of notification and offering is concluded, the decrees regarding the issue shall be placed for the review of all parties for a common period of five days for pleadings and without the necessity of a summons, and the judge shall issue the relative interlocutory order within the period of eight days.

GENERAL PROVISIONS

ARTICLE 1. The Public Ministry shall be heard in all actions prior to the formation of judicial decisions, in the bankruptcy proceedings as well as in the suspension of payments proceedings.

The judges shall notify the Public Ministry in a timely manner and they shall send to them the documents which are necessary for such purpose.

ARTICLE 2. Articles 391 through 394 of the Penal Code for the District and Federal Territories shall be inapplicable to bankrupt merchants or merchants declared to be in suspension of payments.

ARTICLE 3. Articles 945 through 1037 and 1415 through 1500 of the Commercial Code of the 15th of September, 1889 are repealed.

ARTICLE 4. The articles relative to bankruptcy included in the General Law of Insurance Companies are equally repealed.

TRANSITORY PROVISIONS

ARTICLE 1. The present law shall enter into effect three months after its publication in the Diario Oficial.

ARTICLE 2. The proceedings of bankruptcy, judicial liquidation and suspension of payments which are in effect at the date of publication of the present law, if they are not

concluded within the two months following that date, shall suspend their activities and the judges with jurisdiction shall take the necessary measures in the period of the following month so that, upon this law's entering into effect, they continue such proceedings according to this law.

ARTICLE 3. The Ministry of the Treasury and Public Credit, The National Banking Commission and the other organs which intervene in the preparation of the lists of persons qualified to be trustees, shall comply with that which this law sets forth on the same so that before two months pass from the publication of this law, they have prepared the lists of trustees and communicated such in a regular manner to the courts and tribunals of the Federation.

ARTICLE 4. Those marriage contracts under the laws in force, according to previous legislation, the Law of Family Relations and the Civil Code of the Federal District, shall be subject to the provisions of the Commercial Code in effect in the case of the bankruptcy of one or both spouses.

ARTICLE 5. In those states of the Republic in which there are no provisions in effect which are equivalent to those of the Civil Code of the Federal District on matrimonial matters, in the case of the bankruptcy of one of the spouses the provisions indicated in the previous article shall apply.

ARTICLE 6. The references of this Law of the Code of Civil Procedure are made with respect to the Code of Civil Procedure of the District and Federal Territories. This is exceptional and only refers to that expressly ruled by this law. It is also temporary until the Code of Mercantile Procedure is promulgated.

Appendix

In compliance with that set forth in Section I of Article 89 of the Political Constitution of the United Mexican States and for its due publication and observation, the present law was issued in the residence of the Federal Executive Power, in the city of Mexico, D.F., on December 31, 1942.

Appendix

[TRANSPERFECT\TRANSLATIONS LETTERHEAD]

City of New York, State of New York, County of New York

I, Michelle Smoyer, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the attached document (Law of Bankruptcy and Suspension of Payments) from Spanish into English.

/s/ Michelle Smoyer
Signature

Sworn to before me this
20th day of December, 1999

/s/ Kara Sabado
Signature, Notary Public

[Notary Public Stamp]
Stamp, Notary Public

Appendix

EXHIBIT B TO PRIANI DECLARATION

ARTICLE 408. — While the procedure lasts, no credit established previously may be executed against the debtor, nor shall he pay it, the course of the prescription and the terms in the cases cited in the subsequent article remaining in suspense.

However, such protests, as are allowable by law, may be filed.

ARTICLE 409. — With the exception of claims for employment debts,** for food or for credits with a real guarantee, judgments against the debtor whose purpose is to claim the performance of a capital obligation shall be suspended; but actions tending to prevent damages to the things covered by the litigation or to conserve entirely the rights of the parties may be undertaken.

** See Article 114 of the Federal Employment Law of May 10, 1970. (N.R.)

Appendix

[SPANISH]

SECCION QUINTA

Efectos de la declaración en suspension de pagos

ART. 408. — Mientras dure el procedimiento, ningún crédito constituído con anterioridad, podrá ser exigido al deudor ni éste podrá pagarlo, quedando en suspenso el curso de la prescripción y de los términus en los juicios a que se refiere el artículo siguiente.

Sin embargo, podrán levantarse los protestos que correspondan conforme a la ley.

ART 409. — Con excepción de las reclamaciones por deudas de trabajo,** por alimentos o por créditos con garantía real, quedarán en suspenso los juicios contra el deudor que tengan por objeto reclamar el cumplimiento de una obligación patrimonial; pero se podrán practicar en ellos las actuaciones tendientes a prevenir perjuicios en las cosas sujetas a litigio o a conservar íntegramente los derechos de las partes.

[REMAINDER OF EXHIBIT B AND ALL OF EXHIBIT C INTENTIONALLY OMITTED]

** Véase el articulo 114 de la Ley Federal del Trabajo del 10. de mayor de 1970. (N.R.)